EXECUTIVE SUMMARY

Unresolved Issues from the 2007 Charter Review Commission

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: April 22, 2011 **IBA Report Number:** 11-24

Rules Committee Meeting Date: April 27, 2011

Item Number: 3

On March 9, 2011 the Rules, Open Government, and Intergovernmental Relations Committee (Rules) held preliminary discussions on the possibility of making changes to the City's Charter. At that meeting the City Attorney was directed to review the issue of the referendum process and the Office of the Independent Budget Analyst (IBA) was directed to work with the City Attorney to determine which unresolved issues from the 2007 Charter Review Report should be discussed further and to return to the Committee with an overview in April.

In January of 2007, the Mayor requested that the City Council assist in forming a Charter Review Committee (Committee). Each member of the City Council was asked to recommend an individual to represent each district. For six months the Committee and three Subcommittees held 51 meetings and developed a list of eleven recommendations for changes proposed for the 2008 Ballot. Many of the eleven recommendations with changes by the City Council were included on the June 2008 Ballot.

In addition to the eleven recommendations, the Committee also identified three changes for future ballots and eleven items for a future charter committee or commission. As directed by the Rules Committee on March 9, 2011 this report provides an overview of the "unresolved issues" (the three items for future ballots and the eleven items for a future charter committee). Based on our analysis we recommend the following items be researched further for possible inclusion on a future ballot:

- Update Council Policy 000-13 regarding the processes for Appointment to Boards, Commissions, Committees, and other governmental agencies to reflect the current form of government;
- A charter amendment that would enable the City Council to make mid-year budget adjustments based on established criteria;
- Elimination of existing restrictions related to the Environmental Growth Fund.

However, we would reiterate that the cost/benefit associated with such charter amendments be carefully considered. We would also recommend that the Mayor and the past members of the 2007 Charter Committee be provided an opportunity at a later Rules Committee meeting, if desired, to express their ideas on future charter amendments.

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OVERVIEW

On March 9, 2011 the Rules, Open Government, and Intergovernmental Relations Committee (Rules) held preliminary discussions on the possibility of making changes to the City's Charter. At that meeting the City Attorney was directed to review the issue of the referendum process and the Office of the Independent Budget Analyst (IBA) was directed to work with the City Attorney to determine which unresolved issues from the 2007 Charter Review Report should be discussed further and return to the Committee with an overview in April.

In January of 2007, the Mayor requested that the City Council assist in forming a Charter Review Committee (Committee). Each member of the City Council was asked to recommend an individual to represent each district. The mission of the Committee, as outlined by the Mayor, was to:

- Determine modifications necessary to implement the Kroll Report recommendations and other financial reforms;
- Clarify the roles and responsibilities of elected officials and the separation of powers under the Strong Mayor form of governance;
- Identify modifications that would improve the functionality of the Strong Mayor form of governance during the trial period;
- Identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance.

For six months the Committee and three Subcommittees held 51 meetings and developed a list of eleven recommendations for changes proposed for the 2008 Ballot. These

eleven recommendations included changes to the Interim Strong Mayor and Legislative process; financial reforms and the Kroll Report; and, Duties of Elected Officials. Many of the eleven recommendations with changes by the City Council were included on the June 2008 Ballot. The items included on the June 2008 Ballot included:

Proposition A (Passed with 67.94% Yes Votes)

- Exempted from the Managed Competition process the core public safety services provided by police officers, firefighters, and lifeguards.

Proposition B (Passed with 76.81% Yes Votes)

- Required the City Council to place a single measure on the ballot at the June 2010 election to have voters decide whether:
    - The Strong Mayor form of governance should become permanent effective January 1, 2011;
    - Increase the number of City Council districts from eight to nine in conjunction with the next City Redistricting process after the national census in 2010;
    - Increase the number of Council votes needed to override the Mayor's veto to two-thirds of the nine-member Council, after the ninth Council seat is filled by election.

Proposition C (Passed with 63.00% Yes Votes)

- Amended the Charter to:
    - Clearly separate the City's internal auditing function from supervision of the Manager (Mayor) by creating the new Officer of City Auditor;
    - Created the City's Audit Committee;
    - Provide that the Manager (Mayor) would appoint, with Council confirmation, the new Chief Financial Officer, who would assume the City's account responsibilities and oversee the City Treasurer. Appointment of the Treasurer would no longer require Council confirmation.
    - Make permanent the Office of the IBA exclusive of the form of government.

In addition to the eleven recommendations, the Committee also identified three changes for future ballots and eleven items for a future charter committee or commission. As directed by the Rules Committee on March 9, 2011 this report provides an overview of the "unresolved issues" (the three items for future ballots and the eleven items for a future charter committee). In addition, this report provides additional information and recommendations if warranted and also one additional suggestion by the IBA concerning the Environmental Growth Fund for the Rules Committee's consideration. The IBA has also provided this report in advance to the City Attorney's Office for their review.

One last item of note that the Rules Committee should take into consideration when reviewing this report is the expense associated with putting measures on a future ballot. In developing this report, the IBA requested the City Clerk to provide an estimate from the Registrar of Voters (ROV) for including an item on an upcoming ballot. The City Clerk provided our office with the following very conservative estimates for a ***single, five-page ballot*** measure:

- Consolidated with the June 2012 Election $843,000 - $845,000
- Consolidated with the November 2012 election: $318,000 - $320,000
- Stand-alone polls election: $2.8 million - $3.4 million

FISCAL/POLICY DISCUSSION

Proposed Charter Changes for a Later Ballot

Appointment process for Boards, Commissions, Committees, and other governmental agencies (Committee Voted 14-0 in favor of placing on a later ballot)
In their 2007 report, the Charter Committee recommended amending Charter §265 to also allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor. The Committee's concern was that under the new form of government the Mayor was removed "from any role in appointing the City's representatives to outside organizations." The example used by the Committee was that state law grants the City Council the power to select the City's representative to the San Diego Unified Port District.

Since the change in the form of government, the subject of appointment authority to boards, commissions, corporations, and agencies has been well researched by the City Attorney's office. The authority for appointments is best summarized in a February 28, 2006 City Attorney's Report to the Rules Committee:

> "With respect to appointments to boards and commissions, the Charter amendments retained the Mayor's "authority to appoint members of City boards, commissions, and committees, subject to Council confirmation" (San Diego Charter sections 41,43, and 265 (b)(12)). The City Council also retained its powers "to establish committees of the Council and to establish advisory boards and citizen committees as provided for in Charter section 43 (San Diego Charter §270). This includes the City Council's power to remove committee and board members by majority vote; and to appoint members to any such boards or committees should the Mayor fail to do so with 45 days of a vacancy occurring, or after a board is established (San Diego Charter §43).

> "A new addition to the Charter is the Mayor's "[s]ole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor" (San Diego Charter §265(b)(13). The Charter amendments did not specifically address the appointing authority to entities such as City corporations, and other entities where the "controlling law" is not clear. These matters can be complex."

In addition to the City Charter sections, the appointments to boards and commissions is also governed by City Council Policy 000-13 (See Attachment A) which establishes a uniform procedure for the appointments and confirmation of members of commissions, boards, committees, authorities, districts, and councils. However, it should be noted that this policy was last updated in 1984 and does not reflect the changes to the form of government. This was noted in a February 1, 2006 City Attorney report to the Rules Committee that suggested revisions to Council Policy 000-13.

IBA Recommendation: The IBA recommends that Council Policy 000-13 be updated to reflect the current form of government.

Authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. (Committee Voted 10-4 in favor of placing on a later ballot with 1 absent)

This proposed charter change by the Committee was in response to the Mayor being removed from the redevelopment process as a result of the change in the form of government. With the change in the form of government in January 2006, the Mayor was removed as a voting member of the Council and Redevelopment Agency Board. In order to create a role for the Mayor in Redevelopment, the Agency Board appointed the Mayor as Executive Director on an interim basis while options for restructuring were evaluated, and a permanent role for the Mayor determined. The Mayor has since been reappointed nine times and his current term runs through the end of the calendar year.

In December 2010, the Agency Board created a Redevelopment Ad-Hoc Committee to convene for a period of one year to study potential changes to Agency governance structure, including designation of the Executive Director and role of the Mayor in redevelopment. The Ad-Hoc Committee is anticipated to continue meeting throughout 2011.

On January 10, 2011, Governor Brown released the 2011-2012 Proposed State of California Budget, including a proposal to eliminate redevelopment agencies. While no final action has been taken at this point, the State legislature continues to deliberate on this and other budget proposals. Should the Governor's proposal to eliminate redevelopment agencies be approved, the Redevelopment Agency of the City of San

Diego would be prohibited from taking any further action as of the date of approval, and would be disestablished as of July 1, 2011.

IBA Recommendation: The IBA does not recommend that any Charter amendments concerning redevelopment be placed on the ballot until the State budget proposal has been resolved and the Redevelopment Ad-Hoc Committee has completed its work.

Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse. (Committee Voted 7-7 with 1 absent for placing on a later ballot)
The Personnel Department is governed by the Civil Service Commission which is appointed by the Mayor and confirmed by the City Council. The main responsibilities of the Personnel Department are to provide supervision over the selection, promotion, and removal of all classified employees and maintain a competitive merit system that provides equal opportunity for all applicants. The Personnel Department is headed by the Personnel Director who is appointed by the Civil Service Commission. The Personnel Director's responsibilities are identified in Charter Section 37. In addition to his/her duties as the department head, the Personnel Director is also the Secretary of the Civil Service Commission.

The Charter Review Committee proposed a change to the City's Charter based on other Strong Mayor Cities where the mayor has the authority to appoint their Personnel Director. The proponents of this recommendation pointed out that the Personnel Director was an anomaly in that it is the only officer appointed by the Civil Service Commission. In addition, the proponents believed that the proposed language would clarify that the executive branch of the City is under the control of the Mayor as Chief Executive and not to diffuse responsibility.

The opponents of the recommended change, including the Personnel Director at the time, stated that the Personnel Director's role is to maintain the function of ensuring that City workers have an unbiased and impartial person with whom they can discuss working conditions and issues and that if the Personnel Director served at the pleasure of the Mayor, his or her impartiality would not be assured.

In researching this report, our office contacted the current Personnel Director for his thoughts on this proposed change. Many of his comments were similar to those expressed by the previous Personnel Director. Specifically he noted that many of the duties assigned to the Personnel Director were meant to be overseen by the independent Civil Service Commission. With the Personnel Director reporting to the Mayor, the oversight responsibility and functions of the Commission would be effectively eliminated. This independent oversight has served the City well in maintaining consistency and fairness in personnel matters as originally intended.

IBA Recommendation: The IBA agrees with the former and current Personnel Directors that the City's structure allows classified staff the opportunity to discuss working conditions and issues with a neutral department. The IBA does not recommend further action on this item.

2007 San Diego Charter Review Committee Items Researched, But Needing Further Study by a Future Charter Committee or Commission

Appointment of City Attorney

The Subcommittee on Duties of Elected Officials considered the issue of whether San Diego's City Attorney should be elected or appointed. The committee noted that this issue had been raised in previous charter review committees. In addition, the Committee as a whole considered amending Charter Section 40 (City Attorney) to include professional qualifications and also define the authority of the office and who the client of the Attorney should be. This recommendation was not included on the June 2008 ballot.

In response to the Committee's discussion on amending the charter, the former City Attorney responded in a September 2007 Report. In his report, the former City Attorney noted that his position had been an elected officer answering directly to the people for 76 years and this had given the City Attorney necessary independence. He also noted that the independence had been critical to the constitutional balance of powers and the goal of ensuring honesty in City government.

IBA Recommendation: The IBA does not have a recommendation for this item.

Automatic Charter Review

The Subcommittee on Interim Strong Mayor recommended that the Charter include an amendment that requires an automatic periodic review process, under which a committee or commission is formed at regular intervals to examine the charter.

IBA Recommendation: The IBA would note that the Mayor and City Council at any time can elect to create a charter review committee and/or direct the City Attorney to undertake a review of the charter for obsolete sections. At a possible cost of $843,000 - $3.4 million to put an item on the ballot, given that the Mayor and City Council already have the authority to review the charter or create a review committee when needed, we recommend no further action on this item.

Budgetary Authority

The Committee noted that the City Charter is at present silent on the matter of mid-year course corrections to the budget and that many City Charters establish a clear process for

handling of intra and inter-departmental mid-year transfers. Today, this issue continues to be a source of confusion.

At the March 2, 2011 Budget and Finance Committee (B&FC) meeting, the IBA presented a report, based on a recent City Attorney opinion, regarding the City Council's lack of authority to initiate Mid-Year Revisions to the budget (Report #11-10). In response to the IBA's report, the B&FC directed the City Attorney's Office to provide legal advice and feedback on the report.

In their March 28, 2011 response to the IBA's report, City Attorney staff concluded that the Charter vests all authority to initiate revisions to the adopted budget or transfer appropriations in the Mayor. In addition, neither the City Council nor the Mayor may adopt policies or procedures that would conflict with the Charter. Based on this response, the B&FC directed the Budget Committee Consultant to work with the offices of the IBA and City Attorney, and in consultation with the Financial Management Department to revisit and refine the Statement of Budgetary Principles and also bring back recommendations for consideration for a potential charter amendment.

IBA Recommendation: The IBA supports including a charter amendment that would enable the City Council the authority to make mid-year budget adjustments based on a set of established criteria.

City Investment Policies

After reviewing other cities reserve policies and finding that the City of San Diego's Charter did include some provisions for reserves, the Subcommittee on Financial Reform examined the broader issue of whether the City's investment policies needed modification or adjustment. No changes were suggested by the Subcommittee and the recommendation was more that the City might need to examine its asset management in order to see whether it is possible to achieve a higher return on investments for some funds.

The IBA would note that the City already has in place a thorough review process for the City's investment policies. Per California Government Code §53646, the City of San Diego's Investment Policy is annually reviewed and approved by the City Council. Prior to Council review, the City Treasurer's Investment Advisory Committee (IAC) also reviews the policy changes and makes additional recommendations. The Investment Policy is a formal statement of objectives and constraints for the City's investment approach.

IBA Recommendation: Due to the fact that the City already has a thorough review process for its investment policy that is required by state law, the IBA does not recommend further action on this item.

Filling Vacancies

At the request of the City Council, the Subcommittee on Duties of Elected Officials looked into the matter of filling vacancies in City offices. The Subcommittee reviewed other cities charters for processes but did not have a recommendation.

IBA Recommendation: The IBA believes that the processes for filling a Council seat vacancy as outlined in Charter Section 12 and for filling a Mayoral vacancy as outlined in Charter Section 265 are clear and as recent history has shown, these processes have enabled the City to move forward quickly when needed. The IBA does not recommend further action on this item.

Independent Budget Analyst's Status

The Subcommittee on Interim Strong Mayor recommended clarifying that the Office of the Independent Budget Analyst's Duties include providing policy advice to the City Council and also the status of the office if the Strong Mayor-Strong Council form of government expired. In June 2008, as part of Proposition C, the Office of the IBA was made permanent. In addition, the language include in the proposition clarified that the IBA "shall provide budgetary and ***policy*** analysis for the City Council" (Charter §39.3).

IBA Recommendation: The IBA does not recommend further action on this item.

Integration of Strong Mayor Concept into City Charter

Charter Article XV Section 260 integrates the changes related to the Strong Mayor-Strong Council into the overall charter which still retains many of the titles from the Council-Manager form of government including "City Manager". As noted by the Subcommittee on Interim Strong Mayor, if the language regarding the Mayor, Council, the executive branch, and the budget were placed in the original sections of the Charter the document would be less confusing.

IBA Recommendation: The IBA agrees with the findings of the Subcommittee on Interim Strong Mayor that the issue of integration of the Strong Mayor-Strong Council into the Charter should be considered, especially with the form of government now being permanent. However, as noted in the Overview section of this report, the volume of changes that could be required to integrate the Charter and include on a future ballot could be cost prohibitive.

Intergovernmental Relations

After researching other cities intergovernmental relations processes, the Subcommittee on Interim Strong Mayor noted questions that were not addressed in the City's Charter. These questions included:

- Who should advocate for the City when it is affected by the decisions of other levels of government, and the branches thereof?

- Who should decide whether the City files an *amicus brief* in an important case?

Although the City's Charter does not specifically address these questions, the City's Municipal Code does. San Diego Municipal Code Section 22.1901- Department of Intergovernmental Relations outlines the responsibilities of the Department Director and the department. The responsibilities of the department as outlined in the Municipal Code include:

a) Develop for City Council approval City legislative programs for the state and federal legislative sessions.

b) Represent the City before state and federal legislative and administrative bodies.

c) Analyze and submit reports on state and federal legislations affecting the City.

d) Maintain liaison with and assist the City's state and federal legislative delegations in any matter of interest to the City.

e) Initiate and assist other City departments and City organized or created entities in identifying, seeking and receiving federal and state grants and coordinate through legislative advocacy those grant efforts.

f) Administer contracts and oversee independent contractors responsible for state and federal lobbying efforts.

g) Perform related work as directed.

IBA Recommendation: The IBA does not have a recommendation for this item. Per the City Attorney, a Charter change is not necessary to effectuate changes such as additional oversight of the department's legislative program. Such changes may be incorporated into the Municipal Code or a Council Policy as long as they do not conflict with Charter requirements or other applicable laws.

Mayor's Role in Closed Session

The Subcommittee on Interim Mayor noted that when the Mayor was removed from the Council as a component of the change in the form of government, this created an "anomalous situation for handling the kinds of things that are done in closed session." The subcommittee noted that there are closed session matters at which the City would want the Mayor to be present, such as when handling important litigation or establishing strategy for negotiations with companies. In addition, the Subcommittee noted that the

authors of Proposition F wanted the Mayor to be a part of closed session meetings, but did not want to cloud the executive-legislative separation by having the Mayor exercise a vote. Given the importance of the issue that arise in closed session meetings, the Subcommittee thought that this subject was worthy of study.

Charter Section 265 (6) states that the Mayor attend and be heard at any closed session meeting of the Council, but not the right to vote at such meetings. When present, the Mayor shall preside over closed session. It is important to note that the Mayor and his staff are active participants in closed session meetings and he continues to chair the meetings when available. In his absence, the Council President serves as the Chair of the meetings.

In regards to the Mayor having a vote during Closed Session, the City Attorney notes that Closed Sessions are governed by the Brown Act and apply to meetings of the legislative body. The Mayor is not part of the legislative body and may not vote in open or closed sessions of the City Council. The Charter provides that the Mayor has a right to attend and be heard at any closed session meeting of the Council. The Charter also requires that the Council rules provide a process for the City Attorney, Mayor, and Council President to coordinate the docketing of Closed Session matters. Finally, the Mayor has the opportunity to approve or veto any resolution authorizing any settlement that is approved in an open session meeting of the City Council.

IBA Recommendation: The IBA notes that Charter Section 265(6) already gives the Mayor the authority to attend and chair closed session meetings. He may also approve or veto actions taken by the Council in open session that relate to Closed Session matters. Accordingly, the IBA does not recommend further action on this item.

Possibility of Opting into CalPERS

The Subcommittee on Financial Reform briefly looked at the possibility of opting into the CalPERS retirement system. After hearing from SDCERs asset managers, legal counsel and the public employee unions, the subcommittee found insufficient evidence to determine whether there is an immediate need for change in this area and recommended that it should be looked at in the future.

On June 8, 2010, the San Diego County Grand Jury issued a report to the Mayor, City Council, San Diego City Employees Retirement System (SDCER), the City's Audit Committee, and the City's Auditor. The purpose of the Grand Jury's report was to assess the financial issues facing the City and also determine what brought the City to its current financial condition. The report also proposed strategies to mitigate the City's budgetary deficits. The Grand Jury Report included twenty seven findings and sixteen recommendations. Grand Jury Recommendation 10-127 stated "Investigate alternate retirement systems to determine whether the San Diego City Employees' Retirement System (SDCERS) should be dissolved in favor of another system, a purely outsourced

operation, or retention of the current system." The City responded as follows to Recommendation 10-127:

> "Disagree. This recommendation will not be implemented because it is not warranted or reasonable. At this time, the City Charter essentially provides for two alternatives for the administration of the City's retirement plan. These are either SDCERS or CalPERS. To move the administration of the plan to CalPERS would require a majority approval of all active members of SDCERS. In addition, the City's retirement factors and system requirements would have to conform to one of the options currently offered by CalPERS. This may not be possible because vested rights of active and retired members would have to be protected."

IBA Recommendation: The IBA does not recommend further action on this item. The City would have to conform to CalPERS pension options and system requirements, which may not be possible given that the vested rights of members would have to be protected. Additionally, other solutions have been implemented and continue to be pursued for reducing the City's retirement costs and addressing the City's budget deficits.

Timing of Budget Process

The Subcommittee on Interim Strong Mayor included the timing of the budget process in its initial work plan. The Subcommittee was concerned that some of the hard deadlines that the Charter established for the budget were difficult to meet.

IBA Recommendation: As one of the departments significantly impacted by the dates established in the Charter for the Budget, our office does not believe that changes are required to the deadlines. After five years, the City has adjusted to the April 15 deadline established in the Charter for the Mayor to propose his annual budget. Based on this date, the Budget & Finance Committee Chair is able to establish a budget review schedule that provides the City Council over two months to review the proposed budget. This includes two weeks for the IBA to review the proposed budget and present our findings to the City Council. In addition, the Charter does not preclude the Mayor or City Council from discussing possible budget options sooner than the April 15 deadline as the Council has aggressively pursued for Fiscal Year 2012.

IBA Suggested Item for Review

Environmental Growth Fund

On March 22, 2010, the IBA issued Report No. 10-30 regarding City of San Diego Restricted Revenues. The report describes that some of the City's revenue sources are guided by restrictions outlined in the City's Charter, its Municipal Code, and/or Council Policies, and these restrictions or limitations either reduce general revenue sources that would otherwise flow to the General Fund, or require certain funding levels within the

General Fund. One such revenue source is franchise fees the City receives for the transmission and distribution of gas, electricity and steam within the City of San Diego.

SDG&E, the single largest generator of franchise fee revenue, is charged 3% of the gross sales of gas and electricity within the City of San Diego. As outlined by City Charter Section 103.1a, 25 percent of all moneys derived from these revenues are to be placed in the Environmental Growth Fund (EGF). The EGF is to be used exclusively for the purpose of preserving and enhancing the environment of the City of San Diego, provided that two-thirds is to be used for debt service for bonds for the acquisition, improvement and maintenance of open space to be used for park or recreational purposes. If there are no such bonds outstanding or if two-thirds of the EGF exceed the amount necessary to service outstanding bonds then those moneys shall be used for the purpose of preserving and enhancing the environment of the City of San Diego.

The Fiscal Year 2011 Budget for SDG&E franchise fee revenue is $49.8 million. $12.5 million is estimated to be deposited into the EGF, with $37.3 million projected to be allocated to the General Fund.

Franchise Fees– SDG&E
(in millions)

FY	General Fund	EGF
2006	$35.0	$11.7
2007	$39.2	$13.1
2008	$38.7	$12.9
2009	$40.3	$13.4
2010	$41.4	$13.8
2011	$37.3	$12.5

As budgetary constraints have intensified over the last several years, competing priorities arose for General Fund resources. As past EGF bond obligations have been paid off, the newly available EGF funds have been directed to support existing eligible General Fund Park and Recreation programs and capital projects. Over time, the General Fund has become reliant on the EGF to maintain these diminishing services. A change to this approach without the identification of other resources will create an additional burden for the General Fund.

If the City intends to continue to use the EGF to support General Fund park maintenance and similar functions, as is currently the case, consideration should be given to seeking a possible change to the Charter. Eliminating this Charter requirement would permit all gas and electric franchise fee revenue to be received by the City's General Fund, and would remove the restriction that revenues be dedicated to park and open space improvements, providing greater budgetary flexibility.

CONCLUSION

As directed by the Rules Committee on March 9, 2011, the IBA has developed this report to provide an overview of the "unresolved issues" (the three items for future ballots and the eleven items for a future charter committee). In addition, this report provides additional information and recommendations if warranted and one additional suggestion by the IBA concerning the Environmental Growth Fund for the Rules Committee consideration. Based on our analysis we recommend the following items be researched further for possible inclusion on a future ballot:

- Update Council Policy 000-13 regarding the processes for Appointment to Boards, Commissions, Committees, and other governmental agencies to reflect the current form of government;
- A charter amendment that would enable the City Council to make mid-year budget adjustments based on established criteria;
- Elimination of existing restrictions related to the Environmental Growth Fund.

However, we would reiterate that the cost/benefit associated with such charter amendments be carefully considered. We would also recommend that the Mayor and the past members of the 2007 Charter Committee be provided an opportunity at a later Rules Committee meeting, if desired, to express their ideas on future charter amendments.

[SIGNED]

Jeffrey Sturak
Deputy Director

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachments: 1. Council Policy 000-13
2. 2007 San Diego Charter Review Committee Final Report

CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: PROCEDURE FOR MAYOR AND COUNCIL APPOINTMENTS
POLICY NO.: 000-13
EFFECTIVE DATE: December 3, 1984

PURPOSE:

It is the intention of the City Council to establish a uniform procedure for the appointment and confirmation of members of commissions, boards, committees, Authorities, districts, and councils pursuant to the provisions of this policy and California Government Code sections 54970 through 54974.

POLICY:

When a vacancy occurs or is expected to occur on a commission or advisory body to which the mayor has the power of appointment, the mayor shall notify each member of the Council by memorandum of such vacancy or expected vacancy and request nominees for the Mayor's consideration in making an appointment to fill the vacancy. Each Council member may, but is not required to, submit the name of one nominee, with attendant supporting information, to the Mayor within thirty days after receiving the notification of the vacancy.

Notification shall be deemed effective upon receipt of the mayor's memorandum, as indicated by the Council office time and date stamp. At the close of the thirty day response period, the mayor shall then cause to be placed on the next regularly scheduled Council meeting docket the matter of the appointee the Mayor has selected to fill the vacant position. The appointee shall, if a majority of Council members agree, appear before the Council. The Council shall confirm or deny the mayor's recommended appointee to the vacant position. If the confirmation of the Mayor's recommended appointee is denied, the Mayor shall cause to be placed on the next regularly scheduled Council meeting docket the matter of the Mayor's appointment to fill the vacant position.

When a vacancy occurs or is expected to occur on a commission or advisory body to which the City Council has the power of appointment, the City Clerk shall notify each member of the Council by memorandum of such vacancy or expected vacancy and request Council members to submit to the Mayor no later than thirty days after said notification the name of one nominee to fill the vacancy, together with any information in support of such nominee. Notification shall be deemed effective upon receipt of the City clerk's memorandum, as indicated by the Council office time and date stamp. The Council shall comply with the charge contained in Charter Section 42 to "take into consideration sex, race, and geographical area so that the membership of such commissions, boards, committees or panels shall reflect the entire community." The Mayor shall notify the City Council by memorandum of the nominees to fill the vacancy. No earlier than one week after the issuance of his memorandum, the Mayor shall cause to be placed on the next available Adoption Agenda of a regularly scheduled Council meeting the matter of discussion by the Council of the nominees. The Council shall consider all such nominees and select a nominee to fill the vacancy.

It is the intent of the Mayor and City Council that persons recommended as appointees to any City agency pursuant to this policy shall be residents of the City of San Diego. However, when a person

with unique qualifications is available to serve, and who is resident of San Diego County, but not the City of San Diego, then the Mayor and City Council may make a conscious exception.

When nominating a person who is not a City resident, the Mayor or Councilmember shall notify all other Councilmembers of their nomination and provide a statement of his or her unique qualification. The notification shall be by memorandum and delivered within the nomination period.

The charter of The City of San Diego and some, but not all, other laws creating commissions, boards, committees, authorities, districts and councils provide limitations on the number of terms or years a member can serve. It is the intent of the Mayor and City Council that persons recommended as appointees to any City agency pursuant to this policy shall be governed by the maximum length of service provisions of the Charter so that appointees shall be limited to two (2) full consecutive terms or eight (8) consecutive years in office, whichever is longer; with one term or four (4) years, whichever is longer, intervening before they become eligible for reappointment.

It is the intention of this policy to take cognizance of and comply with the provisions of section 54972 through 54974 of the California Government Code.

Selection Procedure

The following procedure is for selection of nominees for vacancies on a board, commission or other advisory body to which the City Council has the power of appointment. As defined in Charter Section 15 a majority vote refers to the vote of a majority of the members elected to the Council. If multiple vacancies on the same board, commission or advisory body are to be filled, an election will be held to fill all vacancies at one time. The following procedure shall be used to fill single or multiple vacancies:

1. The Mayor calls on each candidate whose name appears on the docket as a nominee to make a presentation to the Council in support of his candidacy for appointment (maximum three (3) minutes presentation each).

2. The Mayor calls on member of the Council to ask brief questions of any of the candidates concerning either the presentation or matters contained in their application filed with the City.

3. If the number of nominees equals the number of vacancies the nominees may be elected by general consent or acclamation to fill the position.

4. If the number of nominees is greater than the number of vacancies an election to fill all the vacancies shall be held at one time as follows:

    a. The City Clerk provides ballots to the Council and each Council member votes for the candidates he/she feels to be most qualified for each vacancy and returns the ballots to the City Clerk. Each Council Member has one vote per vacancy.

    b. The candidate(s) receiving the highest number of votes (minimum of five) shall be appointed to the vacancy(ies).

c. If there is one vacancy and no candidate receives a minimum of five (5) votes the Council may limit the slate to the two highest vote getters as finalists. The finalist receiving a majority shall be appointed to the vacancy.

d. In a multiple vacancy situation, if no candidates receive a minimum of five votes, balloting would continue until there were sufficient candidates receiving a majority to fill the vacancies. In a tie situation among the top vote getters those candidates would run off for the vacancies. If an insufficient number of candidates receive a majority of votes to fill all vacancies, a run off shall be held among the remaining vacancies.

RESPONSIBILITY:

It is the intent of the City Council that appointees promptly take the oath of office, are formally advised of any filing requirements pursuant to the conflict of interest code adopted by the agency to which they have been appointed, are provided with required reporting forms and information, and continuing notification and follow-up will be clearly provided by documented procedures; namely,

Responsibility		Action
Mayor (staff)	1.	Inform appointee of requirement to take oath of office at City Clerk's office.
	2.	Inform appointee of requirement to file statement of economic interests reporting forms if disclosure is required for the position.
City Clerk (Deputy)	3.	Prepare oath card for appointee. If position requires filing of statement of economic interest, attach a notice to oath card that appointee shall be provided with forms and instructions and must sign an acknowledgment for receipt of materials.
	4.	Compile sets of forms and information for appointees whose positions require the filing of statements of economic interests.
Appointee	5.	Appear at City Clerk's office, take the oath of office and sign the oath card.
	6.	If the position requires economic interests disclosure, obtain the necessary reporting forms from the Clerk, together with instructional information regarding the reporting and sign acknowledgment receipt for the forms.
	7.	If required by the agency's conflict of interest code, complete and file the statement of economic interests in accordance with the code instructions.

City Clerk (Deputy)

8. Compile and maintain a list of active memberships including status of oaths administered and economic interests disclosure filings, if required. Provide copies of the list to the Mayor; City Attorney and Board/Commission chairpersons.

9. Notify members of annual filing deadlines for statements of economic interests and provide required reporting forms.

10. Receive and file statement of economic interest forms filed by members and appointees.

11. Follow-up on filings and send written notice to delinquent filers advising of requirement to comply with code. (A copy of each notice to be sent to the City Attorney.)

12. Advise City Attorney of appointees' or members' failure to file following the sending of written notification.

HISTORY:

Adopted by Resolution R-205453 04/27/1972
Amended by Resolution R-207141 01/02/1973
Amended by Resolution R-215960 05/12/1976
Amended by Resolution R-217454 01/05/1977
Amended by Resolution R-217592 01/26/1977
Amended by Resolution R-217893 03/15/1977
Amended by Resolution R-221971 10/06/1978
Amended by Resolution R-250473 10/23/1979
Amended by Resolution R-258342 04/25/1983
Amended by Resolution R-261492 09/10/1984
Amended by Resolution R-261821 10/29/1984
Amended by Resolution R-262084 12/03/1984

2007 SAN DIEGO CHARTER REVIEW COMMITTEE

FINAL REPORT

October 4, 2007

OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO

MEMORANDUM

DATE	:	January 22, 2007
TO	:	Council President Peters and Members of the San Diego City Council
FROM	:	Mayor Jerry Sanders
SUBJECT	:	Establishment of a Charter Review Committee

In the City's first year operating under Charter Article XV: Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform.

In cooperation with the City Attorney's office we have begun to work through some of these issues as they arise, but much more work must be focused on these issues in order to fully prepare for an effective long-term implementation of the Strong Mayor form of governance. I believe we can all agree that when roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority.

In addressing these issues, there are four subject areas or questions around which a work plan for the Committee will be set:

- What Charter modifications are necessary to implement the Kroll recommendations and other financial reforms?
- What is a clear definition of the roles and responsibilities of elected officials and the separation of powers under strong mayor?
- What measures may improve the functionality of strong mayor during this trial period?
- What legislative tightening would be required for effective permanent implementation of Article XV?

Each of these areas will be explored by a designated subcommittee and addressed concurrently in the Committee's work.

Committee meetings will be held twice monthly and will be noticed to the public in keeping with the Ralph M. Brown Act. Subcommittees working in each topic area are anticipated to meet once or twice monthly as is convenient for their membership and in keeping with their work load.

I will move immediately to empanel the Committee in preparation for them to begin their work on or around March 1st. It is my intention that the Committee complete its work and return its recommendations in readiness for the 2008 election cycle.

Valuing varied points of view, I would like to work with each of you to identify and nominate three individuals who may be appropriate to serve on the Committee from which I will select one from each of your submissions. In addition, I will make a number of appointments to round out the Committee ensuring a representative balance. We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry.

In addition to the Committee members, three ex-officio members will serve as support resources and advisers to the Committee; one each from the City Attorney, Mayor and the Independent Budget Analyst.

I look forward to working with you on these issues so critical to our City's future and welcome your support for this effort.

JS:ACH

THE CITY OF SAN DIEGO

October 4, 2007

We are pleased to submit this Report of the 2007 San Diego Charter Review Committee. It is the result of a great deal of work by the Committee members, our consultants and staff, and by representatives of the City Attorney and Independent Budget Analyst, and reflects public testimony received at 51 public meetings held from April 13 through October 4, including public forums in each Council District. The efforts to include the public in our deliberations are detailed in the Introduction to the Report, but we should mention that we received testimony from representatives of 53 different organizations, and from 72 individuals, as well as from various public officials and invited experts on various Charter issues.

Given the goal of developing recommendations for the Council to consider for a 2008 ballot, the Committee focused on what it determined were the most urgent issues, studied others that for one reason or another were better left to a future ballot, and deferred others which it concluded should be left to a future Charter Review. This division is reflected in Divisions I, II, and IV of the Report.

On behalf of the Committee, we would like to thank Mayor Sanders and the City Council for this opportunity to be of service. We trust that our recommendations will prove useful to the Council, and to the voters of San Diego.

Sincerely,

John Davies, Chair

Judge James Milliken, Vice Chair

Executed this 4th day of October, 2007.

John Davies, Chair

Judge James Milliken (Ret), Vice Chair

Barbara Cleves Anderson

Alan Bersin

Professor Susan Adler Channick

John Gordon

Donna Jones

Adrian Kwiatkowski

Mike McDade

Vince Mudd

Mark Nelson

Duane J. Roth

Marc Sorensen

Professor Glen W. Sparrow

Lei-Chala Wilson

Committee Members

Chair: John Davies - John G. Davies is Of Counsel with the law firm of Allen Matkins Leck Gamble Mallory & Natsis LLP where he focuses on real estate and probate practice. Mr. Davies is a longtime civic leader and has served as the Judicial Appointments Secretary to California Governors Pete Wilson and Arnold Schwarzenegger.

Vice Chair: Judge James Milliken (Ret) - Judge Milliken is a partner with the firm of DiFiglia & Milliken and served as a Superior Court Judge from 1988 to 2003. In his 16 years on the bench, he served as the presiding Judge of the Juvenile Division, Supervising Judge of the Superior Court and as Presiding Judge of the San Diego Superior Court.

Barbara Cleves Anderson (District 7 nominee) - Barbara Cleves Anderson is a longtime resident of the City of San Diego and an active leader in the community of San Carlos and in the stewardship of Lake Murray and Mission Trails Regional Park.

Alan Bersin - Alan Bersin serves as Chairman of the Board of the San Diego Regional Airport Authority and has served as the State of California's Secretary of Education, Superintendent of San Diego City Schools, and as the United States Attorney for the Southern District of California.

Professor Susan Channick - Susan Adler Channick is a Professor of Law at California Western School of Law where she teaches and writes in the area of health care law with particular emphasis on policy issues such as access and financing, public health law, and legal issues of the elderly.

John Gordon (District 6 nominee) - John Gordon is the Principal with Pacific Management Consulting Group, and has twenty years of experience with financial management roles.

Donna Jones (District 1 nominee) - Donna Jones is a Partner with the law firm of Sheppard Mullin where she specializes in land use. She currently Chairs the Infrastructure Committee of the Chamber of Commerce and from 2004-2006 she chaired its Legal Committee. As Chair of the Legal Committee she headed the Chamber's Working Group on the Strong Mayor Transition in 2005.

Adrian Kwiatkowski (District 8 nominee) - Adrian Kwiatkowski is the Director of Public Affairs for the Monger Company, and served as the Secretary and researcher for the San Diego Charter Change Committee from 1998 to 2000.

Mike McDade (District 2 nominee) - J. Michael McDade is a partner in the law firm of Wertz McDade Wallace Moot & Brower. Long involved in government and civic affairs, Mr. McDade has had the experience of serving as Chief of Staff to both a Mayor of San Diego as well as the Chair of the County Board of Supervisors.

Vince Mudd - Vincent Mudd is the President & CEO of San Diego Office Interiors. He serves on the board of the regional Economic Development Corporation, as Chair of the San Diego-Imperial Counties Chapter of the American Red Cross, and is a Director of State Compensation Insurance Fund.

Mark Nelson - Mark Nelson is the Director of National Government Affairs for Sempra Energy and has long-term experience in governmental and legislative affairs, previously serving as a legislative aide at the County of San Diego and as the Executive Director for the San Diego Taxpayers Association.

Duane J. Roth - Duane J. Roth is the Chief Executive Officer of CONNECT, a non-profit organization that fosters entrepreneurship in promising technology and life sciences businesses in the San Diego region. He is the founder of Alliance Pharmaceutical Corp. where he serves as the Chief Executive Officer and Chairman of the Board.

Marc Sorensen (District 5 nominee) - Marc Sorensen is a Senior Engineer and Program Manager for the Space and Naval Warfare Systems Center. He is a resident of Scripps Ranch where he is active in community affairs including the Scripps Ranch Planning Group, serving as its Chair for three years.

Professor Glen W. Sparrow (District 3 nominee) - Glen W. Sparrow is Professor Emeritus at the School of Public Affairs at San Diego State University and a leading civic voice in the matters of state and local government management, metropolitan regional governance and intergovernmental relations.

Lei-Chala Wilson (District 4 nominee) - Lei-Chala Wilson is an Attorney with the San Diego County Public Defender's Office, and is President of the Earl B. Gilliam Bar Association and past president of the California Association of Black Lawyers.

2007 Charter Review Committee Members:

John Davies, Chair
Judge James Milliken, Co-Chair
Barbara Cleves Anderson
Alan Bersin
Susan Channick
John Gordon
Donna Jones
Adrian Kwiatkowski
Mike McDade
Vincent Mudd
Mark Nelson
Duane Roth
Marc Sorensen
Glen Sparrow
Lei-Chala Wilson

2007 Charter Review Subcommittees and Members:

Duties of Elected Officials
Chair:
Mike McDade
Members:
Susan Channick,
Mark Nelson,
Duane J. Roth,
Marc Sorensen

Financial Reform
Chair:
Donna Jones
Members:
John Gordon,
Judge James Milliken,
Vincent Mudd,
Lei-Chala Wilson

Interim Strong Mayor
Chair:
Alan Bersin
Members:
Barbara Cleves Anderson,
John Davies,
Adrian Kwiatkowski,
Glen Sparrow

2007 Charter Review Committee Staff:

Consultant Staff
James W. Ingram III
James Lough
Catherine L. Tran

Office of the City Attorney
Catherine Bradley
Huston Carlyle
Jo Kiernan
Sharon Spivak
Lawrence Tomanek
Brant Will

Office of the Mayor
Lisa Briggs
Julie Dubick
Jill Monroe
Job Nelson

Office of the Independent Budget Analyst
Tom Haynes
Jeff Kawar
Jeff Sturak
Penni Takade
Andrea Tevlin

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INTRODUCTION

On January 22, 2007, Mayor Jerry Sanders began the process that has produced this report when he called for the establishment of the San Diego Charter Review Committee. After 55 weeks of service as San Diego's first elected Chief Executive Officer since 1931, the Mayor had noted a number of problems in the City's historic shift away from the Council-Manager form of government. In the Mayor's Memorandum on "Establishment of a Charter Review Committee", he stated: "In the City's first year operating under Article XV: Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform." The Mayor pointed out that long-term implementation of Article XV was problematic because of its lack of clarity: "I believe that we can all agree roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority."

In order to undertake the needed review of the Charter, the Mayor asked the City Council to assist in forming a Committee. Each member of the City Council recommended an individual to represent his or her district. When the Mayor asked for these nominations, he clearly stated his ideals for the composition of the Committee: "We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry." Applying the Mayor's criteria, the Council nominated Committee members, the Mayor confirmed one nominee from each Council member, and added members "to round out the Committee ensuring a representative balance."

The San Diego Charter Review Committee was given a very clear set of responsibilities. The Mayor had asked four questions, defining the subject areas around which the Committee should build its workplan. The Committee made finding the answers to those four questions its Mission Statement: "To determine modifications necessary to implement the Kroll Report recommendations and other financial reforms; to clarify the roles and responsibilities of elected officials and the separation of powers under the Strong Mayor form of governance; to identify modifications that would improve the functionality of the Strong Mayor form of governance during the trial period; and to identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance." The Committee then established three Subcommittees with which to accomplish its mission.

The Subcommittee on Interim Strong Mayor would take on the issues of improving the functionality of the Strong Mayor form of governance, and identifying legislative tightening required to implement it on a long-term basis. The Subcommittee on Financial Reform would address the recommendations made by the Kroll Report, and other needed financial reforms. The Subcommittee on Duties of Elected Officials would handle the clarification of the roles and responsibilities and separation of powers under the Strong Mayor form of governance. The Chair of the Committee requested each of the Committee members to identify which Subcommittee best fit their interests in the reform process. The division of labor necessary to allow the Committee to accomplish its mission proved easy to achieve, and each Committee member was assigned to the Subcommittee of his or her choice. The Subcommittees each voted to approve a workplan assembled by staff, and the full Committee approved all of them.

For nearly six months (from April 13 to October 4), the San Diego Charter Review Committee and its Subcommittees held 51 meetings, including public forums in every Council District, and meetings by both Subcommittees and full Committee in Balboa Park and City Hall. The public forums and full Committee meetings were all televised on City Channel, and then placed on the website for webcast. The research that the Committee and its Subcommittees have done has been handed out at all meetings, and placed on the website for wider distribution. During 25 weeks of meetings and forums, the Subcommittees and full Committee heard testimony from labor representatives, members of the business community, employees, administrators and elected officials of the City government, experts on urban governance, members of good government groups, and as many members of the wider public who were so civic-spirited as to participate. In terms of the experience of previous San Diego charter commissions, as well as charter commissions from other cities, the process was very open and inclusive. The full Committee and its Subcommittees voluntarily operated under the requirements of the Brown Act for posting its meetings, taking input from the public and holding all of its meetings and conducting its research and deliberations in full public view with citizen participation. The San Diego Charter Review Committee is grateful for all of the assistance that it received from the public-spirited citizens and residents of this City.

SUMMARY OF CHARTER RECOMMENDATIONS

I. CHANGES PROPOSED FOR THE 2008 BALLOT

INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

1. Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

2. Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

   (AND)

   Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds vote or other supermajority vote greater than two-thirds of the Council to pass, then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. (Also amends Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to correct an inaccurate reference to Section 71 as the Charter Section regarding a balanced budget; the language, such as it is at present, occupies Section 69.)

3. Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.

4. Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

FINANCIAL REFORM AND THE KROLL REPORT

5. Amends Section 39 (City Auditor and Comptroller) and Section 265 (The Mayor) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller (or "City Auditor and Controller"); amends Section 117 (Unclassified and Classified Officers) to clarify that the Chief Financial Officer remains exempt from civil service, as the City Auditor and Comptroller presently is by virtue of department head status

   (AND)

   Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.

6. Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the

City Attorney or his or her designee, a member of the City Council and two outside financial experts.

7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote. Amends Section 111 (Audit of Accounts of Officers) to transfer auditing responsibilities of City Auditor and Comptroller to City Auditor and Audit Committee.

8. Amends Section 69 (Fiscal Year and Manager's Estimate) to require that the Manager propose and the Council adopt a balanced budget annually. The term "balanced budget" will mean sufficient funds are available to cover projected expenditures. The Manager shall monitor and report on the budget throughout the fiscal year and if he or she determines there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the Manager shall propose revisions to keep the budget balanced. Within 60 days of the Manager's submission of these revisions, the Council shall adopt them or offer alternative ones to ensure a balanced budget. The Manager and Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

DUTIES OF ELECTED OFFICIALS

9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

II. CHANGES PROPOSED FOR A LATER BALLOT

12. Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.

13. Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency.

14. Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

III. ITEMS UPON WHICH NO CHANGES ARE RECOMMENDED

15. Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Kroll Report for a board with a different number of members and different affiliations.

I. PROPOSED CHARTER CHANGES FOR THE 2008 BALLOT

Based on all of the input received, the Subcommittees were able to research the many items in their workplans, deliberate on proposals for Charter revision, and forward their recommendations to the full Committee. The Subcommittees made their work available to other Committee members, presented their findings and recommendations before the Committee, and participated in the deliberations on their recommendations. Each of the recommendations below was passed by a majority vote on motions in both the relevant Subcommittee and the full Committee.

The Subcommittees attempted to maintain a division of labor, but an inevitable overlap occurred. For example, the issue of the Mayor's status in terms of redevelopment was handled by the Interim Strong Mayor Subcommittee, but concerns the Duties of Elected Officials. Likewise, the Financial Reform Subcommittee addressed the balanced budget issue, which required examination of the Duties of Elected Officials in adopting and implementing a balanced budget. The unintended overlap between the subject matters of various Subcommittees did not create any difficulties, and in fact served to improve the Committee's work product. Charter review is inherently a collective enterprise in that only the voters can change the City Charter. As democratic theory suggests, the more individuals participate, the better the quality of decisions made.

Because of the cross-cutting nature of the work of the various Subcommittees, and the fact that these recommendations differ in their time sensitivity, the Committee concluded that it was best to categorize its recommendations in terms of when they should be moved forward to the ballot. Because of the importance of assuring that the Strong Mayor Trial truly provides an idea of the improvement that this form of government may offer, the Committee felt that extending the Trial Period and fine-tuning it to allow a fair assessment of this governmental system was a critical need. Because of the recent fiscal woes of the City—as evidenced by the SEC monitoring and Consent Decree, and the Kroll Report's assessment of the City's failure to adequately fund its infrastructure and pension systems—the changes to deal with the issues raised by Kroll were also seen as an immediate priority. Lastly, some of the changes to clarify the duties of elected officials are included in this category because there is an urgent need for improvement.

Other recommendations that the Committee is making are also of great importance and should not be neglected, but the Committee felt the need to prioritize its recommendations for Charter change. In general, recommendations 1-4 are those that emerged from the Interim Strong Mayor Subcommittee. By contrast, recommendations 5-8 have been made by the Subcommittee on Financial Reform. Finally, recommendations 9-11 deal with the matters that the Subcommittee on Duties of Elected Officials identified during its work. However, as indicated above, there was some overlap between the work of the Subcommittees, and each will have made a significant contribution if the City follows up on its work. Refer to Appendix II for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

1. Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless

voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

On November 2, 2004, the voters of the City of San Diego approved Proposition F, creating the Strong Mayor Trial Form of Governance. Proposition F established a trial period, which was to run from January 1, 2006 to December 31, 2010. Some of the proponents of the Charter change recommended here have pointed out that the trial period has proven the effectiveness of the Strong Mayor form. On the other hand, some opponents claimed that the voters were promised a five-year trial, and the trial period should be allowed to run its course before passing judgment on the success of the experiment.

During the Subcommittee's discussion of the Strong Mayor form of government, the debate touched on extending the trial period, repealing the trial period and making the change permanent, or requiring an election to be held automatically at some point before the trial period's expiration. There was a consensus among the members of the Committee that the Strong Mayor form of governance had proven itself. Committee members noted that in the public forums held around the City, the citizens who spoke generally supported the new form of government. The Committee members pointed out that if the trial period was permitted to expire, then the City would face another costly and uncertain transition between forms of government. The Committee found there was a common misconception that under Proposition F, the trial period would automatically be extended, unless something had proven amiss with the Strong Mayor system during the trial. In fact, the Subcommittee found that even if the public were to approve a ballot measure making the Strong Mayor system permanent just before the end of the trial period in a November 2010 ballot, the results would not be certified in time. This would create a temporary, but mandatory return to the Council-Manager form until California's Secretary of State could certify the election results. Based upon a full discussion at many Subcommittee and Committee meetings and public forums, the Committee voted to extend the trial period to the end of 2014, and then make the change permanent unless voters had acted to alter or terminate the trial period in the interim.

VOTE: AUGUST 9, 2007; 13 AFFIRMATIVE, 1 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, KWIATKOWSKI, MCDADE, MILLIKEN, MUDD, NELSON, ROTH, SPARROW, WILSON; NEGATIVE = SORENSEN; ABSENT = JONES.

2. Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

(AND)

Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds vote or other supermajority vote greater than two-thirds of the Council to pass, then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. (Also amends Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to correct an inaccurate reference to Section 71 as the Charter Section regarding a balanced budget; the language, such as it is at present, occupies Section 69.)

As part of the Proposition F transition to the Strong Mayor Form of Government, Article XV created what was characterized as a Mayoral veto. However, the City Council may override the Mayor's veto by the exact same margin by which that body passed an ordinance or resolution in the first place. Some of those who advocate the Charter amendment proposed here have posited that the present process does not establish a true veto, but merely a requirement that the Council reconsider policies the Mayor finds objectionable. By contrast, some of those who oppose the veto and override process recommended above have stated that it would make it too difficult for the Council to pass legislation over Mayoral opposition. Other members opposed the two-thirds vote if its use were to occur prior to Council expansion, because Proposition F created the current simple majority, and Proposition F should not be changed until it is made permanent or eliminated by the voters.

The authors of Proposition F did not avoid creating a real veto because they favored a mere reconsideration, or feared an authentic veto and override process. The hope was that separating the executive and legislative branches and creating checks and balances would bring about such an improvement that even a very imperfect veto provision would be better than the *status quo*. In point of fact, the committee that drafted Proposition F preferred the majority passage and super-majority veto override that is used by most Strong Mayor cities, 47 of the 50 United States, and our national government. However, the difficulty was establishing such a veto and override process when the legislature consists of eight legislators. The solution that Proposition F's advocates arrived at was to allow the Mayor to veto policies, but to then allow the Council to re-enact them by the same margins.

Although the vote on the Committee's recommendation was not unanimous, the membership as a whole did prefer that the City employ the super-majority override that is used by American governments at the local, state and national level. The only point of contention upon the Committee is the size of the supermajority required to override the Mayoral veto. So long as the Council has only eight members, a two-thirds requirement would necessitate consensus among three-fourths of the Council in order to override the Mayor's veto. The Committee's recommendation is for the two-thirds override that is standard, but until the Council is enlarged, two-thirds will mean three-fourths. There are provisions for veto overrides requiring supermajorities larger than two-thirds in a number of cities, but the Committee preferred that the number of Council districts be increased so that the two-thirds override requirement would not be so onerous. However, two-thirds is not a "magic number" for vetoes. For example, in such cities as Philadelphia and San Francisco, employment of the two-thirds veto override requires margins of 71% and 73% (because the former has 11 legislators and the latter 17). It is critical, however, that in order to establish the true veto that good government mandates, there be a larger number of legislators required to override it than the number that initially passed the legislation. One of the Committee members who voted against this recommendation actually favored it, but opposed the motion because of a friendly amendment. The "rider" requested that the Council add members expeditiously to reduce the size of the supermajority required to constitute a two-thirds margin.

VOTE: AUGUST 9, 2007; 8 AFFIRMATIVE, 6 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, KWIATKOWSKI, MILLIKEN, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, MCDADE, SORENSEN; SPARROW, WILSON; ABSENT = JONES.

3. Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.

The City Council has included the same number of members since 1963. This means that San Diego was less than half its present size when the City moved to an eight-member Council (616,500 population in 1963; over 1.3 million in 2007). The eight-member Council of today resulted from action taken by the 1962 Citizens Charter Review Committee, which recommended increasing the Council's size beyond the six members the Charter had mandated since 1931. That body reported that "something should be done to ease the burden of the Council" and the public indicated its assent by approving a Charter amendment. The 1962 Committee thought that "adding to the number of members of the Council" was critical because each Council member needed to serve a district of about 103,000 people. Presently, Council members must represent over 163,000 residents. Some of the proponents of the recommendation for an eleven-member Council favored such a change to allow each legislator to represent a more feasibly sized district, as well as to ensure that the veto override is a little closer to a two-thirds majority. The only opposition raised to this recommendation apparently rose from concerns that while increasing the size of the Council was a good idea, the Committee should not recommend a specific number of districts or should set a date certain by which the increase would occur.

There was general agreement that San Diego's Council faces a challenging task in attempting to represent districts that are so large. The Committee found during its research that most big United States and California cities do not require their local legislators to serve constituencies of such magnitude. In a city as diverse as San Diego, it would seem that smaller districts would allow Council members to be closer to the public. Some recommended that the City should add at-large Council members so as to ensure the possibility of a two-thirds veto override, but leave the number of Council districts at the *status quo*. However, the Committee heard consistent public testimony indicating that while residents were happy with their own Council member, they wished that City government was not so remote. Only by adding Council districts could San Diego guarantee an increase in the closeness of contact between its communities and their representatives. Many members of the public indicated their support for an 11-member Council. The Committee would have preferred to set a date for the needed redistricting, yet was advised by the City Attorney's representatives that such action raised legal issues in terms of the Voting Rights Act. The Committee did note, however, that based on the recent SANDAG figures the City's Council districts are presently at variance with the one person-one vote standard. The Committee wanted redistricting to occur as soon as practicable, not just because of the super-majority veto override, but because it would ease the task that Council members face in providing their communities with high-quality representation.

VOTE: AUGUST 9, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, KWIATKOWSKI, MCDADE, MILLIKEN, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; ABSENT = JONES.

4. Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

One of the gains yielded by the voters' passage of Proposition F was the creation of the Office of the Independent Budget Analyst (IBA). The IBA ensures that the City will benefit from the true checks-and-balances system that the Strong Mayor form of governance seeks to provide. The proponents of the above recommendation thought that the IBA needs to be authorized to provide the Council with analysis of legislative and policy issues, rather than merely budgetary matters. Some Committee members suggested that perhaps the IBA should be re-named the Council Legislative Analyst in the interest of accuracy, but the recommendation passed unanimously.

The IBA is analogous to the federal government's Congressional Budget Office (CBO). The CBO acts to give Congress independent information from the President's Office of Management and Budget. In order to fulfill its duties as a legislative body, the City Council needs the IBA to act as its version of the CBO. While it is true that the most important policy document a city publishes is its budget, not all policy analysis is budgetary in nature. The Committee members commended the City Council for specifying that the IBA was to handle legislative and policy analysis in its codification of that Office's responsibilities. However, the Committee would prefer not to leave such an important matter to the Municipal Code. The Committee's recommendation would institutionalize the actions of the present Council by clarifying in the Charter that the IBA shall be authorized to act as budgetary and policy analyst for the City's legislative body.

VOTE: SEPTEMBER 6, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; ABSENT = MILLIKEN.

FINANCIAL REFORM AND THE KROLL REPORT

5. Amends Section 39 (City Auditor and Comptroller) and Section 265 (The Mayor) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller (or "City Auditor and Controller"); amends Section 117 (Unclassified and Classified Officers) to clarify that the Chief Financial Officer remains exempt from civil service, as the City Auditor and Comptroller presently is by virtue of department head status

(AND)

Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.

In its examination of the City's recent financial woes, the Kroll Report "found the City's financial reporting structure deficient". The report singled out the Charter provisions on the City Auditor and Comptroller as especially problematic. In its outline of the remediation necessary to repair the City's financial structure, the Kroll Report turned first to the need to fix the City Auditor and Comptroller's office and to establish a Chief Financial Officer (CFO). The report noted that the City's previous misstatements of its financial position had resulted from the same factors that created the need for the Sarbanes-Oxley law for private corporations: namely, the failure by the organization to adequately separate the auditing function from other

management-related functions. In San Diego, there were problems because, as Kroll noted, "the auditor audits his own work." In examining the duties of the City Auditor and Comptroller, as they appear throughout the Charter, it is clear that this officer is a Comptroller rather than an Auditor. Only one Charter section deals with the auditing functions of this Officer, and that section concerns the retention of the City's outside auditors. The recommendation is to re-name the City Auditor and Comptroller the CFO; other recommendations offered below would transfer the auditing responsibilities to a separate officer and its oversight committee. The Committee supported the recommendation unanimously, and no one who addressed the Subcommittee or Committee raised any concerns about it.

The second part of the recommendation alters the appointment process for the City Treasurer. The City Treasurer reports to the CFO (City Auditor and Comptroller) in disbursing City funds to honor the CFO's warrant or check-warrant. The Kroll Report recommended that the City clarify the reporting relationship that exists between the CFO and the City Treasurer. To require that the Council confirm the CFO, and then confirm another officer who acts as the CFO's subordinate, does not make sense and clouds accountability. To establish ambiguous reporting relationships and provide subordinate officers with independent power bases is a recipe for trouble. Only with clear lines of responsibility is it possible to fairly assess performance, and place credit and blame appropriately. The Committee supported this recommendation unanimously, and again, did not receive any concerns about it.[1]

VOTE: SEPTEMBER 21, 2007; 13 AFFIRMATIVE, 0 NEGATIVE, 2 ABSENT. VOICE VOTE: AFFIRMATIVE = CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; ABSENT = BERSIN, MILLIKEN.

6. Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.

The absence of an Audit Committee was another structural deficiency that the Kroll Report emphasized. Kroll recommended that the City establish an Audit Committee, consisting primarily of individuals with expertise in accounting, auditing and financial reporting. This would provide the City with needed oversight of its fiscal affairs. The City was unable to follow the Kroll recommendations in this regard because of conflict with the City's Charter provisions regarding the delegation of legislative responsibility. Consequently, the City Council created an Audit Committee, which

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[1] The Committee voted this language on August 23, and at that time the vote included the City Treasurer's appointment. However, the Committee returned to the issue on September 21 so as to ensure full notification had been performed. During the September 21 vote, the Committee did not expressly include the City Treasurer in the motion and vote. Consequently, the Committee voted on September 27 to approve the recommended appointment process for the City Treasurer. The Committee approved the recommendation by voice vote; the margin was 14 affirmative, 0 negative, 1 absent. The absence was that of Committee member Lei-Chala Wilson.

has already begun to yield benefits in the form of increased transparency. Yet the San Diego Charter Review Committee would prefer to follow the Kroll model more fully, because the majority on the Audit Committee it contemplated would be comprised of financial experts. The Council may or may not at any given time have a sufficient number of members qualified to serve on its Audit Committee. The recommendation above would institutionalize an Audit Committee, rather than leaving it up to the Council to continue this oversight role, and ensure that the majority of Audit Committee members possess the requisite qualifications to perform the needed monitoring. There was broad consensus favoring this recommendation by both the Subcommittee and the full Committee. The only opposition appears to have centered on the issue of accountability; one Committee member thought that the Council's Audit Committee should continue to provide oversight of auditing. If the Council did not place members with adequate expertise on the Audit Committee, then they could be held accountable by voters. The City Attorney has opined that the creation of an Audit Committee which includes anyone other than Council members would require Charter change.

It is imperative that the City seriously consider any responsible measure that could prevent the kind of national publicity that San Diego received for its financial woes of the recent past. The City might never have experienced the assignment of an SEC monitor, failure to release accurate CAFR's, and under-funding of its infrastructure and pension systems, if its Charter had created a proper financial structure. The Committee heard no testimony favoring a return to the financial practices of the past. This recommendation would institutionalize the hard lessons that have been learned. The Subcommittee also formulated possible Municipal Code language delineating the workings of the Audit Committee, in order to clarify its "legislative intent", and the operations that it favored in recommending the concept of such a Committee. The language offered for codification of the Audit Committee's operations appears elsewhere in this Report.

VOTE: SEPTEMBER 21, 2007; 12 AFFIRMATIVE, 1 NEGATIVE, 2 ABSENT. ROLL CALL: AFFIRMATIVE = CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, MCDADE, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; NEGATIVE = KWIATKOWSKI; ABSENT = BERSIN, MILLIKEN.

7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor for cause with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote. Amends Section 111 (Audit of Accounts of Officers) to transfer auditing responsibilities of City Auditor and Comptroller to City Auditor and Audit Committee.

Yet another major remedy offered by the Kroll Report was the creation of an independent auditor, serving in a ten-year term with removal by the Audit Committee for cause or by a supermajority of the City Council. The recommendation follows the Kroll model in most respects. Kroll called the officer the Independent Auditor General, but the Committee found in its research that both Auditor General and Internal Auditor are terms of art, and must be used carefully. The Committee preferred the title City Auditor, with the basic guarantees of independence that the

Kroll Report favored. One small change is that rather than allowing a two-thirds majority of the Council to remove the City Auditor, the Committee favored clarity in reporting relationships. The Audit Committee may remove the officer for cause by a four-fifths vote, but the Council may override the Audit Committee by a two-thirds vote. The Council can prevent the City Auditor from being wrongly terminated, but may not terminate that officer on its own without cause, as the Kroll model would allow. Some proponents favored the recommendation because they contended that the appointment process, long term and for-cause standard for dismissal would ensure the independence of the City Auditor. Some opposed the recommendation because they thought that the only way to grant the City Auditor complete independence would be to either make the office elective or deny the Mayor any role in appointing someone to it. From their perspective, the City Auditor reports to the Audit Committee, and therefore the Audit Committee should have a more significant role in selecting this officer. Others opposed the recommendation because they felt the Council should be authorized to terminate the City Auditor.

Both those members of the Committee that favored the recommendation and those that opposed it thought that the City should have a City Auditor. Both groups wanted this officer to possess authority to perform the kind of thorough, state-of-the-art audits that are proposed for codification elsewhere in this report. Both saw a proper application of the principles of auditing as an improvement that would prevent the City from repeating the financial mistakes of the past. The only disagreement was over what method would best achieve auditor independence. Those who favored either election or an appointment process devoid of participation by management believed that these two selection methods would ensure that the City Auditor would be independent in both fact and appearance. Those who favored the Committee recommendation held that appointment would assure the competence of the auditor and that therefore the recommendation above would secure both the independence and the expertise that San Diego needs in its City Auditor.[2]

VOTE: SEPTEMBER 21, 2007; 7 AFFIRMATIVE, 6 NEGATIVE, 2 ABSENT. ROLL CALL: AFFIRMATIVE = CHANNICK, DAVIES, JONES, MCDADE, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, KWIATKOWSKI, SORENSEN, SPARROW, WILSON; ABSENT = BERSIN, MILLIKEN.

8. Amends Section 69 (Fiscal Year and Manager's Estimate) to require that the Manager propose and the Council adopt a balanced budget annually. The term "balanced budget" will mean sufficient funds are available to cover projected expenditures. The Manager shall monitor and report on the budget throughout the fiscal year and if he or she determines there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the Manager shall propose revisions to keep the budget balanced. Within 60 days of the Manager's submission of these revisions, the Council shall adopt them or offer alternative ones to ensure a balanced budget. The Manager and Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

[2] For a fuller discussion of the position of those Committee members who opposed this recommendation, please see the Minority Report, which is included in the attachments.

There are many Charter sections that address the issue of balancing the budget, but none that establishes an explicit policy and provides a clear mechanism to enforce it. This may be yet another reason for the City's recent financial woes. The proposed Charter language will remove the ambiguity on this score from the present Charter, which even inaccurately refers to balanced budget mechanisms that are absent. For example, Proposition F's Section 290(b)(2)(B) mentions "the balanced budget requirements set forth in section 71", but there is no reference to a balanced budget in that section. The Charter sections that do refer to a balanced budget do so weakly, incorrectly or only by implication: 39, 68, 69, 70, 74, 75, 80, 92, 99 and 290(b)(2)(B). The requirement for a balanced budget needs to be express rather than implicit, and enforced rather than treated as a mere guideline.

There was no opposition to the recommendation by any member of the Committee. The only concern raised was that there was insufficient time to deliberate on the matter during the very full schedule at the September 27 meeting. But the Committee recognized that the Subcommittee had invested a significant amount of time investigating the balanced budget issue, and approved the precisely drafted language of its recommendation. Staff conducted a survey of cities, including interviews of the budget officers of major cities and a review of the public administration literature. This research indicated that these requirements are both theoretically sound and practicable, so long as they take account of the financial realities. The key is to require fiscal responsibility, but not to hamstring public officials in their work. One must distinguish cyclical versus structural issues involved in budgeting, to allow budget officers sufficient flexibility to manage the City's budget. With that in mind, the Subcommittee worked closely with the Independent Budget Analyst and the Chief Financial Officer to craft Charter language that would satisfy both objectives. The Committee approved the Subcommittee's diligent work, to which no one raised any objection, and approved the balanced budget recommendation.

VOTE: SEPTEMBER 27, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. VOICE VOTE: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MILLIKEN, MUDD, NELSON, ROTH, SORENSEN, SPARROW; ABSENT = WILSON.

<u>DUTIES OF ELECTED OFFICIALS</u>

9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

In 2006, the voters ratified Proposition C, which authorized the City to use Managed Competition to increase the efficiency of its service provision. The initiative was not supposed to have subjected the services provided by the City's public safety workers to outsourcing. However, it appears that the language of the Charter amendment as it came before the voters did not take account of the language of the Charter sections establishing the Police and Fire Departments (sections 57 and 58). Consequently, the voters inadvertently authorized Managed Competition for these departments. The Mayor and Council have acted by resolution to clarify the intent of Proposition C, yet the offending language remains in the Charter.

The proponents of the above recommendation wanted to assure that the voters' intent was secured. Some worried that unless corrective language is carefully

crafted, the City's existing partnership with Rural/Metro in the San Diego Medical Services Enterprise L.L.C. would be negatively affected. Others raised concerns as to whether the City might accidentally prevent itself from providing services to areas outside the City through "Lakewood Plan" contracts. The above recommendation addresses these concerns by specifying that those who participate in the Safety Retirement System will not have their employment privatized. The Committee consensus on the need for this Charter amendment is evidenced by its unanimity in making the recommendation.

VOTE: SEPTEMBER 6, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. VOICE VOTE: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; ABSENT = MILLIKEN.

10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

One of the most serious problems with the Charter is the ambiguity of Section 40. The City has witnessed constant conflict over defining the duties of the City Attorney's Office. Is the City Attorney supposed to act as a policymaker or to serve as the City's attorney? There has been disagreement over whether this officer acts as attorney for the City as the municipal corporation, or for the City as the general public. The California State Bar's Rules of Professional Conduct provide clear rules for how an attorney is supposed to work when he or she represents an organization, and how to address such matters as Attorney-Client privilege and conflict of interest. The problem with the claim that the City Attorney is to represent the general public is that the people do not speak with one voice. How does one know what the public wants in any given situation? Consequently, an attorney who sees him or herself in this manner acts as both the attorney and the client. How would one know what the public wants, outside of one's own subjective understanding? The responsibility of the attorney to conform his or her actions with the client's right to make decisions is a bedrock principle of our legal system, and protects both the attorney and the client.

Proponents of the recommendation thought the Charter should be clear that the civil client is the municipal corporation, and should establish a process to designate which officers are to make client decisions in the control and settlement of litigation. Those in favor also thought the Charter should establish professional qualifications for election to the City Attorney's Office, and create a process to resolve whether outside legal counsel should be retained in the event that the City Attorney cannot represent a City entity due to a conflict of interest. Those who opposed this recommendation did so on the grounds that the City Attorney must be authorized to represent the people, or that the officer must be maintained in the watchdog role to protect the City's interests. Others who expressed some approval of the concept or the intent of the recommendation stated that this matter was better left to an appointed or an elected Charter commission.

The majority of the Committee noted that the recommendation does allow the City Attorney to litigate on behalf of the people both for criminal matters, as well as civil

matters where the Mayor or Council have given their approval. This language is only controversial in that the present Charter language is so vague it allows action that might well violate the Rules of Professional Conduct. This Charter language requires the City Attorney to follow those rules. The Charter language recommended would preserve intact the City Attorney's ability to use an injunction or *writ of mandamus* to restrain or compel actions of City officials, and thus the officer's oversight role is protected. The Subcommittee spent a great deal of time on the issue, and a number of the other Committee members who were not on this Subcommittee are already well versed in the rules of conduct governing all attorneys. Finally, City Attorneys are not guaranteed representation on appointed or elected Charter commissions: only the governing body or the voters can create a Charter commission. Ultimately, the Committee's majority felt that this issue was one of the most important addressed by the Committee, and that to fail to recommend an improvement to remove this dangerous ambiguity from the Charter would be a dereliction of duty.[3]

VOTE: SEPTEMBER 27, 2007; 9 AFFIRMATIVE, 5 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, JONES, MCDADE, MILLIKEN, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, KWIATKOWSKI, SORENSEN, SPARROW; ABSENT = WILSON.

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

The City's Salary Setting Commission (SSC) has done a good job in recommending appropriate salaries for the Mayor and Council members. The only problem with the current process is that it requires the Mayor and Council to vote upon their salaries. This has placed elected officers in a difficult position, where they always appear to be acting from narrow self-interest. Consequently, they do not act to raise their salaries, even when an objective body has indicated the need to do so. As a result, these salaries are now set at such a level that unless they are able to support themselves from independent means (such as retirement pensions or their own investments), good potential candidates might hesitate to seek City office. This does more than injure the short-run financial standing of the individuals elected to City government. It threatens the City's long-run interests, because San Diego's ability to continue attracting quality candidates to elective offices may depend upon establishing salaries that would allow these candidates to live in the City.

The full Committee recommended this change because it would retain the best features of the present process, maintaining the right of voters to use the referendum if they think City officers' salaries should not be increased. Yet the recommended language would remove the politics from the process, allowing an independent body to decide upon their compensation. The recommendation would also include establishing compensation for the City Attorney within the SSC's

[3] For a fuller discussion of the position of those Committee members who opposed this recommendation, please see the Minority Report, which is included in the attachments.

purview. The Subcommittee debated a great deal on whether to recommend that the SSC examine any particular indices. The Subcommittee and Committee decided in the end that since the City was delegating this decision to a non-legislative body, it would be appropriate to offer guidance. The SSC presently considers the very indices included in the Charter amendment proposal in making its recommendations for Mayor and Council salaries.

The majority of Committee members favored this recommendation, but there was no clear consensus. Those members who opposed it did indicate they were not doing so because they thought the City's elected officials were over-compensated. Their main objection was that the Council should be making this recommendation, because its members are already aware of the need for this Charter amendment. The other objection raised was that this matter was beyond the scope of the tasks assigned to the Committee. The full Committee voted to recommend the Charter change, despite these issues.

VOTE: SEPTEMBER 6, 2007; 8 AFFIRMATIVE, 6 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, JONES, MCDADE, MUDD, NELSON, ROTH, SORENSEN; NEGATIVE = CLEVES ANDERSON, DAVIES, GORDON, KWIATKOWSKI, SPARROW, WILSON; ABSENT = MILLIKEN.[4]

[4] On October 4, 2007, the Committee revisited this issue in deliberating on the priority to be accorded its several recommendations. The draft report had placed this salary setting recommendation among the list of items to be dealt with on a later ballot. The Committee decided this matter was one of greater urgency, and thus voted unanimously to recommend that the salary setting amendment be placed on the ballot in 2008. The Committee approved the recommendation by a roll call vote; the margin was 14 affirmative, 0 negative, 1 absent. The absence was that of Committee member Lei-Chala Wilson.

II. PROPOSED CHARTER CHANGES FOR A LATER BALLOT

The Committee also identified a number of other Charter changes that were needed. However, unlike the amendments the Committee has recommended for the 2008 ballot, these items could be handled at a later time. They are not needed as urgently as the 11 Charter amendments recommended above. Two of the Subcommittees forwarded to the Committee some of the Charter changes that are recommended for a later ballot. The Interim Strong Mayor Subcommittee proposed the Redevelopment Agency amendment, and the Subcommittee on Duties of Elected Officials forwarded the amendments regarding appointments of City representatives to outside organizations, and the appointment and removal of the Personnel Director. The full Committee approved all of these amendments except one by majority vote. The Committee divided evenly on whether to approve the Charter amendment regarding the Personnel Director. Refer to Appendix II for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

12. Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.

One of the consequences of the passage of Proposition F was the removal from the Mayor of any role in appointing the City's representatives to outside organizations. For example, state law grants the City Council power to select the City's representatives to the San Diego Unified Port District. When the Mayor was a member of the Council, he or she might participate in such important decisions. The Subcommittee initially favored adoption of language establishing an appointment process that granted the Mayor sole authority to nominate individuals for these kinds of agencies, with the Council appointing them to office. This would have been used for appointing City representatives to all bodies for which state or federal law gives appointing authority to someone other than the Mayor. This change would ensure that San Diego follows the federal model of executive nomination and legislative confirmation more faithfully. However, the representatives of the City Attorney's Office counseled that it is unclear whether state law would permit the City to create such a nominations process.

Even though there is no case law directly on point, the Subcommittee did not want to recommend Charter language that might not withstand a court challenge. Therefore the Subcommittee forwarded and the full Committee unanimously recommended the above Charter change. This recommendation resembles the process that the Council used under Council Policy 13, and that the Mayor and Council recently employed in selecting City representatives to outside organizations in cases where it is presently unclear who holds appointing authority (e.g., SANDAG bodies). This change would still provide much needed improvement in that it would clarify some of the appointments that are presently ambiguous, and allow the Mayor to participate in the appointment process for these important agencies. To deny the only policy-maker who is elected by the whole City any role in the appointment of representatives to agencies as significant as the Port District was clearly not the voters' intent in ratifying Proposition F. This change would help to restore the public's intent in voting for the Strong Mayor system and its federal model of separation of powers.

VOTE: SEPTEMBER 6, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MUDD, NELSON, ROTH, SORENSEN, SPARROW, WILSON; ABSENT = MILLIKEN.

13. Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency.

When San Diego voters ratified Proposition F, they removed the Mayor from the City's redevelopment process. Since the Mayor was only allowed to preside over the City Council in closed session meetings, and could not vote with that body, the Mayor could not act as part of the Redevelopment Agency (RA). However, Proposition F placed most City staff in the executive branch of City government, and thus under the Mayor as CEO. The executive branch includes individuals working on redevelopment projects, although not directly for the RA. The RA contracts with the City of San Diego, as well as the Centre City Development Corporation (CCDC) and the Southeastern Development Corporation (SEDC). Therefore, some of those working under contract with the RA are under control of the CEO-Mayor, so long as the RA continues to contract with the City by resolution (not ordinance).

During the Proposition F transition, the City Council wrestled with the prospect that the RA's Executive Director and its City staff would report to the Mayor rather than to the City Council acting as RA.[5] The solution they adopted was to designate the Mayor as the RA's Executive Director. This was permitted because the RA's bylaws allowed the designation of someone other than the City Manager as Executive Director. Naming the Mayor to this position prevented creation of an ambiguous, dual reporting situation for both the City Manager and any City staff loaned out, contracted or partly employed by the RA. For that reason, the majority of the Committee believed the Charter should require that the Council's solution to the problem be used. The Charter should be changed to institutionalize it.

Those Committee members who opposed this recommendation pointed out that it would affect more than just redevelopment. It would also impact the Housing Authority and any future organizations created by state or federal law. The Director of the Housing Authority appeared before the Subcommittee to oppose this recommendation. Opponents argued that this is a matter of great complexity because of the disparity between legal opinions on whether the City can take this action without crossing the line between municipal affairs and matters of statewide concern. They contended that when the Council acts as RA, it is a state agency. The Committee favored the recommendation, but decided specifically to place it among the recommendations for a later ballot. This would allow time to address any questions as to whether this is permissible under California law. In principle, the Committee indicated that the Mayor is the only policymaker elected by the whole

[5] See the August 2, 2005 Chairperson's Report to the City Council Strong Mayor-Strong Council Transition Committee on the Legal Effect of Proposition F on the City of San Diego Redevelopment Agency for a discussion of the Council's engagement with this issue.

City and should not be left out of the redevelopment process. State law clearly provides that cities with a Mayor-Council form of government can create a redevelopment agency through Mayoral appointment and Council confirmation. San Diego went the other state law-prescribed route in making the Council the RA because when the City created its RA, the Mayor was a member of the Council.

VOTE: SEPTEMBER 27, 2007; 10 AFFIRMATIVE, 4 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, JONES, KWIATKOWSKI, MCDADE, MILLIKEN, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, SORENSEN, SPARROW; ABSENT = WILSON.

14. Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

The Subcommittee's members wondered why the City used its present method in selecting its Personnel Director, because this model is at such variance with the way that private organizations select this officer. Therefore, staff conducted extensive research into the issue of how other cities appoint their Personnel Director. The research indicated that Mayoral appointment of this officer is a time-tested concept, and is fairly common among Strong Mayor cities. The proponents of the recommendation pointed out that the Personnel Director is an anomaly in that it is the only officer appointed by a City commission (Civil Service). The City lacks an elegant governmental system because of all of the *ad hoc* deviations that its Charter creates in variance from a clear governance system. Opponents contended that the Personnel Director in a city is not directly analogous to a private corporation, and that this is a matter of civil service. They further posited that the Personnel Director's role is to maintain the Charter-established function of ensuring City workers have an unbiased and impartial person with whom they can discuss working conditions and issues; if the Personnel Director serves at the pleasure of the Mayor, his or her impartiality would not be assured.

The proponents of the recommendation pointed out that although the Personnel Director works as the Secretary of the Civil Service Commission, that Commission recommends to the City Council the rules for Civil Service. It is the Commission that monitors the civil service system, with assistance from the Personnel Director. Those who advocated the recommendation above believed that the proposed language would clarify that the executive branch of the City is under the control of the Mayor as the Chief Executive Officer, rather than diffusing responsibility and accountability, as the Charter does at present. Those who objected to the recommendation argued that the system has worked satisfactorily for the past three decades, and that this action would be tantamount to "if it ain't broke, break it." The lack of a consensus upon the Committee is indicated by the seven-seven split that its vote on the matter produced.

VOTE: SEPTEMBER 26, 2007; 7 AFFIRMATIVE, 7 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, JONES, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, KWIATKOWSKI, MCDADE, SORENSEN, SPARROW, WILSON; ABSENT = MILLIKEN.

III. ITEMS UPON WHICH THE COMMITTEE RECOMMENDS THAT NO CHANGE BE MADE AT PRESENT

15. Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Kroll Report for a board with a different number of members and different affiliations.

The failure to adequately fund SDCERS was one of the most important items investigated by the Kroll Report. Indeed, this item alone has created the greatest jeopardy for the City's financial future. In 2004, the City began to address this issue when the voters ratified Propositions G and H. The Subcommittee examined the results of these two Charter amendments, and found that great improvement had already been made. Therefore, the Subcommittee has forwarded to the full Committee a recommendation to retain the status quo in terms of the composition of the SDCERS Board of Administration. The reforms seem to be working at this point, and thus perhaps it would not be appropriate to attempt to alter the board's composition in the way recommended by the Kroll Report.

VOTE: SEPTEMBER 27, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT. VOICE VOTE: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, JONES, KWIATKOWSKI, MCDADE, MILLIKEN, MUDD, NELSON, ROTH, SORENSEN, SPARROW; ABSENT = WILSON.

IV. SUMMARY OF MUNICIPAL CODE PROPOSALS

16. The Subcommittee on Financial Reform offered draft language to provide an idea of its "legislative intent" for the actions of the Audit Committee. If the voters pass the Audit Committee Charter Amendment, then the Charter Review Committee has recommended language to codify the operations of the Audit Committee.

The Subcommittee had originally recommended this language be placed in the Charter because its members thought that it was important to ensure that the Audit Committee worked well to protect the City. However, the full Committee persuaded the Subcommittee that it was preferable to establish the Audit Committee through a Charter amendment, and then allow the Mayor and Council to provide for its operations through the Municipal Code. The Charter amendment empowers the Audit Committee to act in the ways that the Subcommittee intended it should. The Subcommittee would not presume to draft the Municipal Code for the Mayor and Council. However, the Subcommittee has submitted potential draft language to indicate its "legislative intent" in recommending the change to the Audit Committee. During its deliberations on its final report, the full Committee unanimously approved inclusion of the Municipal Code language that the Subcommittee had proposed regarding the Audit Committee.

VOTE: OCTOBER 4, 2007; 12 AFFIRMATIVE, 3 ABSENT. VOICE VOTE: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON, KWIATKOWSKI, MILLIKEN, MUDD, NELSON, ROTH, SORENSEN, SPARROW; ABSENT = JONES, MCDADE, WILSON.

17. The Subcommittee on Financial Reform has offered draft language to provide an idea of its "legislative intent" regarding the types of auditing that the City Auditor should include in the Audit Plan. These include management audits, performance audits, and audits of the economy and efficiency of City operations. If the voters pass the City Auditor Charter Amendment recommended above, then the Committee has recommended language to codify the operations of the City Auditor.

The Subcommittee has proposed language for the Municipal Code to show its members' ideas about the types of auditing that the City Auditor should include in the Audit Plan. Once again, the Subcommittee had initially thought these details were so important that members placed them right in their proposal for Charter change. However, the Subcommittee recognized later that the Charter should not be an operations manual, but a statement of the principles of governance. Consequently, the Subcommittee offered the language to demonstrate its "legislative intent," which might appropriately be placed in the Municipal Code. The proposed language represents the latest advancements in auditing, and would authorize many different audits designed to assess the City's service delivery. If the voters pass the City Auditor Charter Amendment recommended by this Committee, then the Committee would bring this language to the attention of the Mayor and Council when the Charter amendment is codified. The full Committee cast a unanimous vote to include this recommended language in its report.

VOTE: OCTOBER 4, 2007; 12 AFFIRMATIVE, 3 ABSENT. VOICE VOTE: AFFIRMATIVE = BERSIN, CHANNICK, CLEVES ANDERSON, DAVIES, GORDON,

KWIATKOWSKI, MILLIKEN, MUDD, NELSON, ROTH, SORENSEN, SPARROW; ABSENT = JONES, MCDADE, WILSON.

V. SUMMARY OF ITEMS RESEARCHED, BUT NEEDING FURTHER STUDY BY A FUTURE CHARTER COMMITTEE OR COMMISSION

18. Appointment of City Attorney

The Subcommittee on Duties of Elected Officials considered the issue of whether San Diego's City Attorney should be elected or appointed. This issue has come up for consideration by every Charter commission the City has formed since its decision to elect the City Attorney under the provisions of the 1931 Charter. This is an issue worthy of study, given that most major cities in the United States appoint their Corporation Counsel. Even though both Los Angeles and San Diego elect their City Attorneys, this is not common practice even in California. Only 11 of the state's 468 cities elect a person to act as City Attorney. Some members of the Subcommittee favored a change in the method for selecting the City Attorney, while others preferred retention of the *status quo*. In the final analysis, the Subcommittee felt that this was a matter better left to study by a future charter committee/commission.

19. Automatic Charter Review

The Subcommittee on Interim Strong Mayor debated the issue of whether to recommend that the Charter should be amended to require an automatic review of the City Charter on a periodic basis. A number of cities around the country (e.g., Portland, Oregon and others) have decided to establish an automatic charter review process, under which a committee or commission is formed at regular intervals to examine the city's organic document. This process creates a mechanism for handling mundane matters, such as the removal of obsolete details from the charter, or dealing with major issues that may arise in a city. Of course, nothing can be done by a charter review committee/commission without voter approval. The Subcommittee decided that more study should be done, into such issues as whether the committee/commission would have to be appointed by the Council or be elected. In view of the number of decisions that would need to be made as to the details, the Subcommittee opted to place this matter with others for which further study is recommended.

20. Budgetary Authority

The City Charter is at present unclear on the matter of mid-year course corrections to the budget. Many city charters establish a clear process for the handling of intra- and inter-departmental transfers. The City has had to deal with the ambiguity of the Charter on an *ad hoc* basis, making adjustments in whatever way can secure compromise between the parties involved in budget implementation. The Subcommittee on Duties of Elected Officials was interested in this area, and conducted research regarding this matter, but thought that it would ultimately lack the time necessary to give this subject a full hearing. The Subcommittee recommended that this matter be submitted to the full Committee for inclusion in the list of items needing further study by another charter committee/commission.

21. City Investment Policies

The Subcommittee on Financial Reform performed analysis on a number of items, and even noted that such cities as New York City and San Francisco have established reserve requirements in their charters. By establishing a "rainy day fund", some

cities have worked to ensure that their municipal finances are much more secure against the vicissitudes of the marketplace. After finding that the City Charter makes some provision for reserves, the Subcommittee examined the broader issue of whether the City's investment policies need modification or adjustment. For example, the Subcommittee members have heard complaints that maintenance districts do not receive the funding they have been promised when the City's investment pool underperforms expectations. The City might need to examine its asset management in order to see whether it is possible to achieve a higher return on investment for some of these funds. The Subcommittee thought that this kind of innovation might well serve San Diego in the future. However, the decision as to what Charter changes might be needed to implement the policy was one that the Subcommittee and full Committee would need a great deal more time to address. Consequently, the Subcommittee voted to ask the full Committee to include this item among those for which further study would be necessary and proper.

22. Filling Vacancies

The Subcommittee on Duties of Elected Officials looked into the matter of filling vacancies in City offices. Recent events in San Diego created a situation where the City was compelled to hold elections during the public's observance of holidays, and certain City officials were unable to continue acting in their official capacities so that a successor could be selected. The City Council requested that the San Diego Charter Review Committee examine the portions of the Charter that dealt with the filling of vacancies in the positions of Mayor and Council member. The Subcommittee examined the pertinent sections, perused the charters of other cities for better processes, but thought that this would require further study. Representatives of the City Attorney's office argued that this was best handled by adjustments to the Municipal Code, and stated that this was a case where the dictum of "if it ain't broke, don't fix it" should be applied. Since the Subcommittee did not think sufficient time was available to decide whether this part of the Charter is broken, much less how to fix it, its members concluded that it was better left to a future charter review committee/commission.

23. Independent Budget Analyst's Status

The Subcommittee on Interim Strong Mayor did recommend changes to the IBA's office to clarify that it should provide policy analysis, but also examined the IBA's scope and duties in a broader sense. During the Subcommittee's work, a question arose as to what would happen if the Proposition F trial were permitted to expire. Of course, since the IBA's Office is included in Article XV, then the Charter status of that office would also cease to exist at the sunset of the trial period. The members of the Subcommittee were very impressed by the IBA's work in conjunction with the Committee, as well as in the City in general. The Subcommittee heard some testimony that the IBA's Office should exist regardless of whether the City were to go back to Council-Manager government. There was also testimony to the effect that if the Council-Manager form returned to effect, then there would be no need for an IBA. Under the Council-Manager form of governance, the City Manager is supposed to provide the Council with budgetary and policy analysis. The Subcommittee felt that this area was important, but one that its members would not have time to fully discuss. Therefore, this issue was placed in the "further study needed" category.

24. Integration of Strong Mayor Concept into City Charter

The Subcommittee on Interim Strong Mayor thought that appending Article XV at the end of the Charter was problematic because it amends sections throughout the document. If a future charter committee were to perform a thoroughgoing analysis of the City's basic law, then it might be preferable if the various components of the Strong Mayor form of government were moved to the relevant portions of the Charter. If the language regarding Mayor, Council, the executive branch, the budget and other matters occupied the place in the Charter they ought, perhaps the document would not be so confusing. Under California law, the Charter acts to protect the public from actions by their City officials that would otherwise be permissible. To the degree that a Charter is clear, the public is protected, and the rules allow the public to hold their elected and appointed officials accountable for their actions. If a Charter is not crystal-clear, the public is not protected and the lines of responsibility allow blame-shifting behavior. It is no coincidence that Orange County, whose 1994 bankruptcy set a national record, was the only populous California county without a charter. The actions of Orange County's officials occurred under the general-law structure that counties without a home rule charter employ. The Subcommittee realized that it would be better if the intent of Article XV were integrated into the Charter, but that this is a matter that requires further study by a future committee or commission.

25. Intergovernmental Relations

The Subcommittee on Interim Strong Mayor conducted research into the issue of whether the Charter should spell out a process for handling intergovernmental relations. The Subcommittee found in its research that intergovernmental relations has been something of a political hot potato, passed between different officials and agencies. Some city charters regard intergovernmental relations as the City's "foreign policy" and accordingly specify a mechanism for establishing the City's official policy. Who should advocate for the City when it is affected by the decisions of other levels of government, and the branches thereof? Who should decide whether the City files an *amicus* brief in an important case? The present Charter does not answer these questions definitively. The Subcommittee thought that this area was significant, but that it would need more study than the Committee could at present accord. Therefore, it requests that a future committee or commission study it more fully.

26. Mayor's Role in Closed Session

One of the by-products of the transformation wrought by Proposition F was the process through which the City handles closed session meetings. Article XV provides that when the Mayor attends these meetings, the Mayor acts as presiding officer, but exercises no vote. When the Mayor was removed from the Council, this created an anomalous situation for handling the kinds of things that are done in closed session. There are closed session matters at which the City would want the Mayor to be present, such as when handling important litigation or establishing strategy for negotiations with companies. The authors of Proposition F wanted the Mayor to be a part of these closed session meetings, but did not want to cloud the executive-legislative separation by having the Mayor exercise a vote. Given the importance of the issues that arise in closed session meetings, the Subcommittee thought that this subject was worthy of study, but believed that a body with more time to do so could better assess the need for improvements in this area.

27. Possibility of Opting into CalPERS

The Subcommittee on Financial Reform wanted to provide a full review of the remediations suggested in the Kroll Report. Of course, that report painted a picture of the City's pension funding schemes that was disturbing, to say the least. What if the City were to remove the proverbial cookie jar from reach by opting into the CalPERS retirement system? CalPERS is the largest public pension system in the world. CalPERS was so well managed that even during the 2001 downturn that accompanied skepticism with the real value behind "new economy" stocks, its assets were intact. The SDCERS portfolio appears upon first inspection not to have performed as well. The Subcommittee heard testimony from the asset managers and legal counsel at SDCERS, from the public employee unions who rely upon its solvency for their present and future retirements, and did its own research as well. The staff examined the public pension systems for the largest cities in the state and nation, and provided comparative (although dated) data upon these systems. The Subcommittee found insufficient evidence to determine whether there is an immediate need for change in this area, and felt that a full investigation of this matter should be made by a future committee or commission. The Subcommittee also recognized that the Charter presently provides a process under which the City could make such a move if desired, and felt comfortable with this decision to defer to others.

28. Timing of Budget Process

The Subcommittee on Interim Strong Mayor included the timing of the budget process in its initial workplan. It seemed that some of the hard deadlines that the Charter establishes for the budget are very difficult to meet. The Charter specifies clear dates, such as February 15 (for the Salary Setting Commission to submit its recommendations for Council salaries to the Council), or April 1 (for certain departments to transmit their annual budget estimates to the Manager), or June 15 (the date by which the Council must hold two public budget hearings). Whether these deadlines are entirely practicable was an issue that the Subcommittee originally intended to address. Yet it would have taken the Subcommittee and the full Committee a good deal of time to understand the number of individual deadlines, and the interaction between them, much less to recommend any improvements in this area. The Subcommittee decided that this deserves more time than the Committee has, and that a future charter review committee/commission may find this issue worthy of consideration.

APPENDIX ONE
LIST OF INDIVIDUALS WHO ADDRESSED THE COMMITTEE DURING PUBLIC COMMENT PERIODS

This list includes the speakers who addressed the Committee in its meetings and those of its Subcommittees, as well as Public Forums held in each Council District. Because many of these individuals spoke at multiple events, and gave the Committee input on many separate items, it was not feasible to include all of that information here. However, the comments of these speakers, and the dates on which they spoke, appear in the Committee and Subcommittee Minutes, and the webcasts of the Committee and Public Forum, all of which are available on the Committee's website.

The members of the public are listed in alphabetical rather than chronological order. Although the Committee is aware that some of the individuals listed below have affiliations, such as with good government groups, their affiliation is only listed if they specifically indicated it in their speakers' cards. Often, City residents who are members of particular groups are very careful to distinguish their personal opinions from those of the groups with whom they are affiliated. The Committee respected these considerations, and thus only listed affiliations when the speaker indicated in the speaker card that he or she was speaking as a representative of a group.

Scott Alevy, San Diego Regional Chamber of Commerce
Ernestine Bahn
Andy Berg, San Diego Regional Chamber of Commerce
Kathleen Blavatt
Donn Bleau
Beverly J. Boys
Cory Briggs, League of Women Voters
Jeaanne Brown
Joyce Brown
Cole Cannon
Cathy O'Leary Carey
Carol Changes
Dwayne Crenshaw
Georgia Crowne
Norma Damashek
Carl DeMaio
Amy Denhart
Jess Durfee
Jill Elsner
Wayne English
Beryl Flom
Donna Frye
Edwina Goddard
Lorena Gonzalez
Fatuma Guyo
Billie Hame, Balboa Ave. Citizens Advisory Committee
Phil Hart
John Hartley
Pete Hekman
Cathleen Higgins, Municipal Employees Association

Gary G. Hill
Jewell D. Hooper
Bob Ilko
Latoya Jarrett, Common Cause
Michael Jenkins
Forney Johnson
Herb Johnson, San Diego Rescue Mission
Andrew Jones, Deputy City Attorney Association
Frank Jordan
Charles Kaminski
Maggie Kennedy
Deborah Knight
Calvin D. Langston
Richard Lawrence
Richard Ledford
Rev. Willie E. Manley, Greater Life Baptist
Susan Medek
John McNab
Ryan Mims
Julie Osborn
William S. Pennick
Dorene Dias Pesta
Scott Peters
Millie Pilot
Anthony Porello
Charles Pratt
Eddie Price
Juan A. Ramirez
Janet Richards
Jarvis Ross
Mel Shapiro
Mignon Sherer
Wilbur Smith
Jackie Statman
John W. Strump
Joy Sunyata
Judy Swink
Joyce Tavrow
Jack Tex
Ian Trowbridge
Jim Varnadore
Tommie Watson
Howard Wayne
Mary Jean Word
Ann Zahner
T.J. Zane, The Lincoln Club of San Diego County
Camille Zombro

LIST OF INDIVIDUALS INVITED TO SPEAK BEFORE THE COMMITTEE AT MEETINGS OF THE COMMITTEE AND SUBCOMMITTEE AND PUBLIC FORUMS[6]

Name	Topic	Date
Michael Aguirre, San Diego City Attorney	Charter Section 40 and the City Attorney; general Charter issues.	July 27, 2007 Duties of Elected Officials Subcommittee meeting
Bill Anderson, Director of Planning, San Diego	Overview of the general plan and community updates and well as project review.	May 18, 2007 Interim Strong Mayor Subcommittee meeting
Dan Bamberger, Deputy City Attorney, San Diego	Charter Section 40 and the City Attorney.	August 31, 2007 Duties of Elected Officials Subcommittee meeting
Ruben Barrales, President of the San Diego Regional Chamber of Commerce	Strong Mayor in the City of San Diego.	April 27, 2007 Full Committee meeting
Jaymie Bradford, Office of the Mayor	Redevelopment/Land Use and the Charter.	June 15, 2007 Interim Strong Mayor Subcommittee meeting
Lisa Briggs, Policy Advisor to Mayor Sanders	City Labor Unions and the Charter. Charter Sections 57 & 58.	May 11, 2007 Full Committee meeting June 15, 2007 Duties of Elected Officials Subcommittee meeting
Erik W. Bruvold, President of San Diego Institute for Policy Research	Informational Report on Budgetary Authority under the San Diego Charter.	May 11, 2007 Full Committee meeting
Jerry Butkiewicz, San Diego-Imperial Counties Labor Council, C.E.O.	A Labor and Community Response to the Charter Reform.	June 22, 2007 Full Committee meeting
Lisa Celaya, Office of the Independent Budget Analyst	Redevelopment/Land Use and the Charter.	June 15, 2007 Interim Strong Mayor Subcommittee meeting
Shauna Clark, Los Angeles Charter Review Commission Policy Analyst	What Makes a Good City Charter?	June 22, 2007 Full Committee meeting
Anna Danagger, Program Manager, Business Office	Budgetary Authority and the Charter.	May 18, 2007 Duties of Elected Officials Subcommittee meeting
Carl DeMaio, Performance Institute, President	Separation of Powers and Charter reform.	May 11, 2007 Full Committee meeting
Brent Eidson, Office of the Mayor	Mutual aid pacts providing Fire Dept. with additional support in emergencies.	July 13, 2007 Duties of Elected Officials Subcommittee meeting

[6] The Committee invited many more individuals, including all members of the City Council. This list only includes the names of individuals who were able to attend some of the Committee or Subcommittee meetings or public forums.

Kevin Faulconer, Councilmember District 2	Audit Committee.	June 22, 2007 Full Committee meeting
Ronne Froman, Chief Operating Officer, City Of San Diego	Presentation on the necessity for Charter review in San Diego. Appointment and supervision of Personnel Director under Strong Mayor.	May 11, 2007 Full Committee meeting June 15, 2007 Duties of Elected Officials Subcommittee meeting
Donna Frye, Councilmember District 6	San Diego's Audit Function: the need for City Auditor Independence.	August 23, 2007 Full Committee meeting
Les Girard, Former Deputy City Attorney, S.D., and attorney with McKenna Long & Aldridge	Redevelopment law and the City of San Diego. Redevelopment/Land Use and the Charter.	May 18, 2007 Interim Strong Mayor Subcommittee meeting June 15, 2007 Interim Strong Mayor Subcommittee meeting
Jay Goldstone, CFO for the City of San Diego CFO and Acting COO for San Diego	Recommendations contained in the Kroll Report. Personnel Director in Comparative Perspective.	May 18, 2007 Financial Reform Subcommittee meeting July 13, 2007 Duties of Elected Officials Subcommittee meeting
Lorena Gonzalez, San Diego-Imperial Counties Labor Council, Political Director	A Labor and Community Response to the Charter Reform.	June 22, 2007 Full Committee meeting
Phil Hart, Mission Valley Resident	Comments on the Strong Mayor Form of Government.	September 6, 2007 Full Committee meeting
Cathleen Higgins, San Diego Municipal Employees Association	The appropriateness of the current composition of the SDCERS Board of Administration.	August 24, 2007 Financial Reform Subcommittee meeting
Ben Hueso, Councilmember District 8	Remarks on Charter reform process.	July 19, 2007, Public Forum, Council District 8
Stan Keller, SEC Appointed Independent City Monitor	Audit Committee.	June 22, 2007 Full Committee meeting
San Diego Police Chief William Lansdowne	Section 117, 57 and 58 regarding non-contracting out safety employees.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
Richard Ledford, San Diego Regional Chamber of Commerce	Sunset Provisions; Increasing Council Districts; Mayoral Veto.	July 16, 2007 Interim Strong Mayor Subcommittee meeting
Elizabeth Maland, San Diego City Clerk	Charter Review and the Process for Submitting Ballot Measures.	June 1, 2007 Full Committee meeting

Theresa McAteer, former S.D. Deputy City Attorney; McAteer and McAteer	Budgetary Authority and the Charter.	May 18, 2007 Duties of Elected Officials Subcommittee meeting
Doug McCalla, CIO for SDCERS	Composition of SDCERS Board of Administration; Opting into CalPERS.	September 7, 2007 Financial Reform Subcommittee meeting
George Mitrovich, San Diego City Club President	2004 Strong Mayor Committee.	April 13, 2007 Full Committee meeting
Betsy Morris, San Diego Housing Authority	Necessity of independence of Housing Authority from Redevelopment Agency.	August 6, 2007 Interim Strong Mayor Subcommittee meeting
Barry, Newman, San Diego County Taxpayers Association	Recommendations to Charter Committee--Strong Mayor; Kroll Rept.	June 1, 2007 Full Committee meeting
Council President Scott Peters	New Role for the City Council under Prop. F. Comments on need for Charter reform. Filling Vacancies and Establishing Salaries. Council members' assignments to Council committees, e.g. Audit.	April 27, 2007 Full Committee meeting June 28, 2007, Public Forum, Council District 1 June 29, 2007 Duties of Elected Officials Subcommittee meeting August 31, 2007 Financial Reform Subcommittee meeting
Jay Poole, City of Chesapeake, representing the Association of Local Government Auditors	Audit Committee and the position of Internal Auditor.	August 31, 2007 Financial Reform Subcommittee meeting
Harriet Richardson, City of San Francisco, representing the Association of Local Government Auditors	Audit Committee and the position of Internal Auditor.	August 31, 2007 Financial Reform Subcommittee meeting
Ron Saathoff, President of San Diego City Firefighters Local 145	The Role of the City's Personnel Director.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
Mayor Jerry Sanders	Implementing the Strong Mayor Form of Governance in the City of San Diego. The importance of Charter reform for the City. Commending public participation in the Charter change process.	April 27, 2007 Full Committee meeting June 28, 2007, Public Forum, Council District 1 July 19, 2007, Public Forum, Council District 8

Mayor Sanders, cont'd	Thanking community members for involvement in Charter reform. Appreciation of public participation in important work of Charter Review Committee.	July 24, 2007, Public Forum, Council District 4 July 28, 2007, Public Forum, Council District 3
Don Shanahan, Deputy City Attorney, San Diego	Modification of Charter Section 40	September 27, 2007 Full Committee meeting
Rich Snapper, S.D. Personnel Director	Human Resources and the Personnel Department within the Charter. The responsibilities of the Personnel Director. Personnel Director.	June 29, 2007 Duties of Elected Officials Subcommittee meeting July 13, 2007 Duties of Elected Officials Subcommittee meeting July 13, 2007 Duties of Elected Officials Subcommittee meeting
Randy Spenla, City Auditor, City of Phoenix	Internal Auditor and Audit Committee.	August 10, 2007 Financial Reform Subcommittee meeting
Greg Stepanicich, Municipal Attorney	Charter Section 40 and the role of the City Attorney.	August 24, 2007 Duties of Elected Officials Subcommittee meeting
Andrea Tevlin, San Diego's Independent Budget Analyst	Informational Report on Budgetary Authority in the San Diego Charter.	May 11, 2007 Full Committee meeting
Chris Waddell, General Counsel for SDCERS	Composition of SDCERS Board of Administration; Opting into CalPERS.	September 7, 2007 Financial Reform Subcommittee meeting
Janice Weinrick, Assistant Director, Economic Development and Community Services	Overview of the general plan and community updates and well as project review.	May 18, 2007 Interim Strong Mayor Subcommittee meeting
John Wertz, Vice Chairman, '88 Charter Review Commission	1989 Charter Committee Report.	April 13, 2007 Full Committee meeting
Governor Pete Wilson	Historical and Statewide Perspective on Strong Mayor Governance in the City of San Diego.	April 27, 2007 Full Committee meeting
Tony Young, Councilmember District 4	Welcoming public to Charter reform process.	July 24, 2007, Public Forum, Council District 4

RESEARCH RESOURCES
LIST OF MATERIALS CONSULTED

The Committee wanted to guarantee that its recommendations would be based on a strong foundation. Therefore, the staff conducted extensive research into the City's present operations under the Charter. That was greatly facilitated by the participation of the public speakers listed in the two previous tables. Yet the Committee felt a need to do its due diligence by conducting its own research. Therefore, the Committee asked its staff to look at both San Diego's experience, as well as those of other cities.

In order to perform its assigned task, the staff thought it was absolutely critical to understand the City Charter. A city charter is a local government's constitution, and unless one understands how it was formed, it would be irresponsible to suggest any changes to it. A city's charter tracks its history as sensitively as a seismograph vibrates along with the tectonic plates. Given this consideration, the staff felt it was imperative to know the Charter's history.

Consequently, the staff reviewed the *Statutes of California*, sample ballots and San Diego newspaper archives to track down every Charter under which the City has been governed since 1850. The staff reviewed the 1850 Act of Incorporation, the 1852 repeal of the Incorporation Act and creation of the Board of Trustees to govern the City, and the 1868, 1872 and 1876 revisions of the 1852 "charter." In addition, the staff examined all of the home rule charters under which the City has operated: its first "home rule" Charter of 1889 (only the fourth one allowed in California, and the fifth in the nation); the 1909 Charter, under which the City adopted the Commission form of government; and the 1931 Charter, which moved the City to the Council-Manager form of governance. The staff tracked down every single one of the hundreds of Charter amendments the voters have passed, from the first 11 amendments adopted in 1901 to the 2 amendments the City passed last year. Major amendments included the City's move from a bicameral to a unicameral legislature (1905), the increase in City Council members from six to eight (1963), the City's adoption of district primaries (1988), and the ratification of the Strong Mayor form of governance (2004). The staff also examined the work of the Charter review committees that have made recommendations for changes to the 1931 Charter; in particular, staff looked at the work of the committees of 1940-1941, 1952-1953, 1962, 1968, 1973, 1988, 2000 and 2004.

Besides examining primary documents, the staff researched the secondary literature on San Diego government, including books such as City Attorney Shelley Higgins' *This Fantastic City: San Diego* (named an official policy document by the City of San Diego), Richard Pourade's multi-volume history of the City, the Price and Stone monograph, *City Manager Government in San Diego*, Captain George Mott's commentary on the origins of the 1931 Charter, San *Diego—Politically Speaking*, and a number of masters theses on the history of this City's government and politics.

In order to provide a comparative perspective, it was critical to examine the experiences of other cities, and particularly those that are Strong Mayor cities or have recently undergone the transition San Diego recently made. In addition, the governmental systems of large United States and California cities, as well as cities noted for "best practices", were a key source of information. The staff surveyed the largest 15 cities in the United States and California to determine their: auditing

functions; automatic charter review processes; City Attorney structures; Council sizes; Council vote and veto provisions; human resources and personnel systems; pension systems; and rules for setting the salaries of elected officials. On some issues, the staff surveyed the top 100 cities in the country. Some cities outside the top 15 were also examined because they are Strong Mayor or "best practices cities".

In some cases, the Subcommittee wanted further information on a specific item, such as what other cities do in terms of establishing a legislative analyst, or how the State of California sets salaries for elected officials. Yet another example would be the research staff conducted to ascertain whether there was a correlation between the auditing structures and municipal bond ratings of the nation's largest cities. This specialized research was done upon request, and appears in the Subcommittees' work product. In order to answer these research requests, the staff reviewed the charters, municipal codes and websites of most major cities in the country. A list of some of the websites that the staff accessed in doing these reports follows the end of this summary of research.

In other areas, the Committee requested more detailed information on a specific issue for a few large cities. Therefore, staff conducted telephone interviews with budget officials in such cities as Los Angeles, New York City, Oakland, Philadelphia and San Francisco. The Committee would like to thank the following individuals, who gave their time to answering staff questions regarding the balanced budget requirement in actual practice: Jennifer Lopez, from the L.A. City Administrative Office; Doug Turetsky, from the City of New York's Independent Budget Office; Barbara Parker, from the Office of the City Attorney of Oakland; Diane Reed, from Philadelphia's Department of Finance, Office of the Budget; and Michael Stover from the Office of the Legislative Analyst for the City and County of San Francisco.

In addition, the staff employed the extensive public administration literature on the issue of balanced budgets. The staff provided information from such books as Esther Fuchs' *Mayors and Money* (an examination of how Chicago's Strong Mayor prevented fiscal crisis, whereas New York City's formerly weak mayor system allowed it, when both faced the economic downturns of the mid 1970s). The staff analyzed the work of the 2004 NYC Charter process, which Fuchs led to enact a stronger balanced budget regime for the Big Apple. The staff also brought in the insights of other important works, such as Jonathan Kahn's *Budgeting Democracy* (an excellent book on how the budget concept that municipalities invented, and state and national governments copied, ultimately reconstituted the relationship between citizens and their government). Because San Diego is a California municipality and faces different constraints than New York City, staff also consulted Mark Baldassare's *When Government Fails*, which explains the causes of Orange County's 1994 bankruptcy.

The staff reviewed the experiences of other cities that have recently undergone the Strong Mayor transition, such as New York City, Indianapolis, Fresno, New Orleans, Columbus, Los Angeles, Oakland and San Francisco. Because San Diego has recently undergone this transition, the City's own website contains a great deal of information, which could also be accessed by staff. One of the resources available from this website was the Rand Report on the Strong Mayor transition that San Diego's Better Government Association of San Diego commissioned in 2005. The report is entitled *Facing the Challenge of Implementing Proposition F in San Diego*, and was authored by Kevin F. McCarthy and Rae W. Archibald, with Brian Weatherford. The high quality of work in that report was in part due to its authors' consultation of Committee member Glen Sparrow. Professor Sparrow wrote the

seminal works examining the facilitative leadership that allowed former San Diego Mayor Pete Wilson to lead the City in spite of its Council-Manager Charter. Two works that staff would single out for special mention are: "The Emerging Chief Executive 1971-1991: A San Diego Update," *Facilitative Leadership in Local Government*, ed. James Svara, San Francisco: Jossey-Bass, 1994; "The Emerging Chief Executive: The San Diego Experience," *Urban Resources*, Vol. 2, No. 1, Fall 1984. Reprinted in National Civic Review, Vol. 74, No. 11, December 1985.

It is not practical to attempt to convey in this brief report all of the interviews conducted, and charters and municipal codes studied. The Committee's three Subcommittees wanted to have access to the best information available, and the staff attempted to ensure they had all the data needed to make informed decisions. Because the briefs, memoranda, reports and tables that the Committee requested and reviewed are too compendious to include in this report, they may be accessed via the Committee's website.

LIST OF CHARTER-RELATED WEBSITES REFERENCED IN COMMITTEE REPORTS

Anaheim Charter	http://www.anaheim.net/docs_agend/charter.pdf
Anaheim Municipal Code	http://www.amlegal.com/anaheim_ca/
Anaheim	http://www.anaheim.net/
Bakersfield City Charter	http://www.qualitycodepublishing.com/codes/bakersfield/view.php?topic=charter_of_the_city_of_bakersfield_state&frames=on
Bakersfield Municipal Code	http://www.qualitycodepublishing.com/codes/bakersfield/main.php
Bakersfield, City of	http://www.bakersfieldcity.us/
Boston City Charter	http://www.cityofboston.gov/cityclerk/pdfs/cc_charter.pdf
Chicago	See Illiinois Code of General Statutes Article 65.
Clearwater, FL City Charter	http://www.clearwater-fl.com/gov/codes/pdf/City_Charter.pdf
Cleveland City Charter	http://caselaw.lp.findlaw.com/clevelandcodes/
Columbus City Charter	http://www.ordlink.com/codes/columbus/_DATA/CHARTER/index.html
Columbus Municipal Code	http://municipalcodes.lexisnexis.com/codes/columbus/
Columbus	http://www.cityofcolumbus.org/
Dallas City Charter	http://www.dallascityhall.com/pdf/cao/01Chartr.pdf
Dallas City Codes	http://www.dallascityhall.com/html/codes.html
Dallas, City of	http://www.dallascityhall.com/
Denver City Charter	http://www.municode.com/resources/gateway.asp?pid=10257&sid=6
Detroit City Code	http://www.municode.com/resources/gateway.asp?sid=22&pid=10649
Detroit City Council	http://www.ci.detroit.mi.us/legislative/CityCouncil/
Detroit, City of	http://www.ci.detroit.mi.us/default.htm
Fresno City Charter	http://www.municode.com/resources/gateway.asp?pid=10421&sid=5
Fresno Municipal Code	http://www.municode.com/resources/gateway.asp?pid=10421&sid=5
Fresno Redevelopment Agency	http://www.fresnorda.com/
Fresno, City of	http://www.fresno.gov/default.htm
Houston City Charter	http://www.houstontx.gov/charter/index.html
Houston City Council	http://www.houstontx.gov/council/

Indianapolis, City of	http://www.indygov.org/home.htm
Jacksonville, City of	http://www.coj.net/default.htm
Long Beach City Charter	http://municipalcodes.lexisnexis.com/codes/longbeach_charter/
Long Beach Municipal Code	http://municipalcodes.lexisnexis.com/codes/longbeach/
Long Beach Redevelopment Agency	http://www.longbeach.gov/cd/redevelopment/default.asp
Long Beach, City of	http://www.ci.long-beach.ca.us/
Los Angeles City Charter	http://www.amlegal.com/los_angeles_ca/
Los Angeles Community Redevelopment Agency	http://www.crala.org
Los Angeles Municipal Code	http://www.amlegal.com/los_angeles_ca/
Nashville-Davidson City Charter	http://www.municode.com/resources/gateway.asp?pid=14214&sid=42
New Orleans City Charter	http://www.cityofno.com/portal.aspx?portal=1&tabid=9
New York Administrative Code	http://public.leginfo.state.ny.us/menugetf.cgi
New York City Charter	http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf
New York City Council	http://www.nyccouncil.info/
Oakland City Charter	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/_DATA/CHARTER/index.html
Oakland Community and Economic Development Agency	http://www.business2oakland.com/main/redevelopment.htm
Oakland Municipal Code	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/maintoc.htm
Oakland, City of	http://www.oaklandnet.com/
Philadelphia City Charter	http://www.amlegal.com/library/pa/philadelphia.shtml
Philadelphia City Code	http://www.amlegal.com/library/pa/philadelphia.shtml
Philadelphia City Council	http://www.phila.gov/citycouncil/
Philadelphia Mayor's Office	http://www.phila.gov/mayor/

Philadelphia, City of	http://www.phila.gov/
Phoenix City Charter	http://www.municode.com/resources/gateway.asp?pid=13485&sid=3
Phoenix City Code	http://www.municode.com/resources/gateway.asp?pid=13485&sid=3
Phoenix, City of	http://phoenix.gov/
Portland City Charter	http://www.portlandonline.com/auditor/index.cfm?c=cibei
Riverside City Charter	http://www.riversideca.gov/municipal_code/Title_CH/Default.htm
Riverside, City of	http://www.riversideca.gov/
Rverside Municipal Code	http://www.riversideca.gov/municipal_code/
Sacramento City Charter	http://www.qcode.us/codes/sacramento/view.php?topic=city_of_sacramento_charter
Sacramento City Codes	http://www.qcode.us/codes/sacramento/
Sacramento Housing & Redevelopment Agency	http://www.shra.org
Sacramento, City of	http://www.cityofsacramento.org/
San Antonio City Charter	http://www.sanantonio.gov/clerk/charter/charter.htm
San Antonio City Code of Ordinances	http://www.municode.com/resources/gateway.asp?pid=11508&sid=43
San Antonio, City of	http://www.sanantonio.gov/?res=1280&ver=true
San Francisco City and County Charter	http://www.municode.com/Resources/gateway.asp?pid=14130&sid=5
San Francisco City and County Codes	http://www.municode.com/Resources/ClientCode_List.asp?cn=San%20Francisco&sid=5&cid=4201
San Francisco Redevelopment Agency	http://www.sfgov.org/site/sfra_index.asp
San Francisco, City and County of	http://www.sfgov.org/
San Jose City Charter	http://www.sanjoseca.gov/clerk/Charter.asp
San Jose City Council	http://www.sanjoseca.gov/council.html
San Jose Municipal Code	http://www.municode.com/Resources/gateway.asp?pid=14367&sid=5
San Jose	http://www.sjredevelopment.org

Redevelopment Agency	
San Jose, City of	http://www.sanjoseca.gov/
Santa Ana, City of	http://www.ci.santa-ana.ca.us/
Stockton City Charter	http://www.stocktongov.com/clerk/pages/Charter/index.cfm
Stockton Municipal Code	http://www.stocktongov.com/SMC/Chapter01/ChapterIndex.cfm
Stockton, City of	http://www.stocktongov.com/

APPENDIX II

TEXT OF CHARTER LANGUAGE AND OFFICIAL BALLOT (STRIKEOUT AND UNDERLINE) LANGUAGE RECOMMENDED

Recommendation #1: Sunset Revision

Summary of Recommendation

Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

Recommended Charter Language

Section 255: Operative Date; Future Action by Voters
This Article shall remain in effect until December 31, 2014, at which time it shall become permanent unless voters have approved a ballot measure to extend, shorten or repeal the effective period of this Article.

Recommended Language for Official Ballot

Section 255: Operative Date; ~~Sunset of Article;~~ Future Action by Voters
~~(a) The date for the provisions of this Article to become operative is January 1, 2006.~~

~~(b) After January 1, 2006, the provisions of t~~This Article shall remain in effect ~~for a period of five years (~~until December 31, 201~~0~~4~~)~~, at which time this Article shall become permanent unless voters have approved a ballot measure ~~automatically repealed and removed from the Charter. However, the Council and the people reserve the right to propose amendments to the Charter at the November 2010 election or sooner~~ to extend, ~~make permanent,~~ shorten or repeal the effective period of this Article~~ and to consider increasing the number of Council districts to nine at the time of the next City Council district reapportionment which follows the national decennial census in 2010~~.

Recommendation #2: Veto Override

Summary of Recommendation

Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

(AND)

Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds vote or other supermajority vote greater than two-thirds of the Council to pass, then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. (Also amends Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to correct an inaccurate reference to Section 71 as the Charter Section regarding a balanced budget; the language, such as it is at present, occupies Section 69.)

Recommended Charter Language

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If a two-thirds vote or other supermajority vote greater than two-thirds of the Council is required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

###

(2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.

(A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.

(B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by a two-thirds vote of the Council as set forth in Section 285. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 69.

Recommended Language for Official Ballot

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least ~~five members~~two-thirds of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If ~~more than five votes are~~a two-thirds vote or other supermajority vote greater than two-thirds of the Council is required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, ~~such larger vote shall be required to override the veto of the Mayor~~then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty ~~(30)~~ calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

###

(2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.

(A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.

(B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by ~~the vote of at least five members of the Council~~a two-thirds vote of the Council as set forth in Section 285. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section ~~71~~69.

Recommendation #3: Eleven-Member City Council

Summary of Recommendation

Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.

Recommended Charter Language

Section 270: The Council
(a) The Council shall be composed of eleven councilmembers elected by district, and shall be the legislative body of the City.

###

(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1.

Recommended Language for Official Ballot

Section 270: The Council
(a) The Council shall be composed of ~~eight~~eleven councilmembers elected by district, and shall be the legislative body of the City.
###
(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1.

Recommendation #4: Independent Budget Analyst

Summary of Recommendation

Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

Recommended Charter Language

Section 270: The Council
###
The Council shall have the right to establish an Office of the Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council and may be removed from Office by the Council at any time. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall determine the specific powers and duties of this Office and its manager by ordinance.

Recommended Language for Official Ballot

Section 270: The Council
###
The Council shall have the right to establish an Office of the Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council and may be removed from Office by the Council at any time. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall determine the specific powers and duties of this Office and its manager by ordinance.

Recommendation #5: Chief Financial Officer

Summary of Recommendation

Amends Section 39 (City Auditor and Comptroller) and Section 265 (The Mayor) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller (or "City Auditor and Controller"); amends Section 117 (Unclassified and Classified Officers) to clarify that the Chief Financial Officer remains exempt from civil service, as the City Auditor and Comptroller presently is by virtue of department head status

(AND)

Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.

Recommended Charter Language

Section 39: Chief Financial Officer.
The Chief Financial Officer shall be appointed by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his or her successor is appointed and qualified. The Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by the Chief Financial Officer and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, the Chief Financial Officer shall be responsible for the creation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He or she shall perform the duties imposed upon Chief Financial Officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the City Manager from transferring to other officers matters in charge of the Chief Financial Officer which do not relate directly to the finances of the City. The Chief Financial Officer shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. The Chief Financial Officer shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.

Section 45: City Treasurer
The Manager shall appoint the Treasurer. He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

[No alterations are proposed for the rest of Charter section 45, and thus it is not reproduced here.]

Section 117: Unclassified and Classified Services
Employment in the City shall be divided into the Unclassified and Classified Service.
(a) The Unclassified Service shall include:
###
7. Chief Financial Officer

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
###
(10) Notwithstanding contrary language in Charter section 39, sole authority to appoint the Chief Financial Officer, subject to Council confirmation;
(11) Notwithstanding contrary language in Charter sections 30, 39, 57 or 58, authority to dismiss the Chief Financial Officer, the Chief of Police or the Chief of the Fire Department, subject only to a right for these city officials to appeal to the City Council to overturn the Mayor's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Mayor. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the City Council no later than 30 days after the appeal is filed with the Clerk;

Recommended Language for Official Ballot

Section 39: ~~City Auditor and Comptroller~~Chief Financial Officer.
The ~~City Auditor and Comptroller~~Chief Financial Officer shall be ~~elected~~appointed by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his or her successor is ~~elected~~appointed and qualified. The ~~City Auditor and Comptroller~~Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by ~~him~~the Chief Financial Officer and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, the Chief Financial Officer shall be responsible for the creation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the ~~Auditor and Comptroller~~Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He or she shall perform the duties imposed upon ~~City Auditors and Comptrollers~~Chief Financial Officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the ~~Council~~City Manager from transferring to other officers matters in charge of the ~~City Auditor and Comptroller~~Chief Financial Officer which do not relate directly to the finances of the City. ~~He~~The Chief Financial Officer shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. ~~He~~The Chief Financial Officer shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.

Section 45: City Treasurer
The Manager shall appoint ~~a~~the Treasurer~~ subject to confirmation by a majority of the members of the Council~~. He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

[No alterations are proposed for the rest of Charter section 45, and thus it is not reproduced here.]

Section 117: Unclassified and Classified Services
Employment in the City shall be divided into the Unclassified and Classified Service.
(a) The Unclassified Service shall include:
###
7. ~~Budget~~Chief Financial Officer

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

###

(10) Notwithstanding contrary language in Charter section 39, sole authority to appoint the ~~City Auditor and Controller~~Chief Financial Officer, subject to Council confirmation;

(11) Notwithstanding contrary language in Charter sections 30, 39, 57 or 58, authority to dismiss the ~~City Auditor and Controller~~Chief Financial Officer, the Chief of Police or the Chief of the Fire Department, subject only to a right for these city officials to appeal to the City Council to overturn the Mayor's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Mayor. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the City Council no later than 30 days after the appeal is filed with the Clerk;

Recommendation #6: Audit Committee

Summary of Recommendation

Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.

Recommended Charter Language

Section 39.1: Audit Committee
The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three (3) public members of the Audit Committee shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the City Attorney or his or her designee, the Independent Budget Analyst and two (2) outside financial experts. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

The Audit Committee shall have oversight responsibility regarding the City's accounting, auditing, internal controls and any other financial or business practices required by this Charter or City ordinance. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council shall specify the powers and duties of the Audit Committee by ordinance. This section shall not be subject to the provisions of section 11.1.

Recommended Language for Official Ballot

Section 39.1: Audit Committee

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three (3) public members of the Audit Committee shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the City Attorney or his or her designee, the Independent Budget Analyst and two (2) outside financial experts. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

The Audit Committee shall have oversight responsibility regarding the City's accounting, auditing, internal controls and any other financial or business practices required by this Charter or City ordinance. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council shall specify the powers and duties of the Audit Committee by ordinance. This section shall not be subject to the provisions of section 11.1.

Recommendation #7: City Auditor

Summary of Recommendation

Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote. Amends Section 111 (Audit of Accounts of Officers) to transfer auditing responsibilities of City Auditor and Comptroller to City Auditor and Audit Committee.

Recommended Charter Language

Section 39.2: Office of City Auditor
The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee and the Council. The City Auditor may be removed for cause by a vote of four-fifths of the members of the Audit Committee subject to the right of the City Auditor to appeal to the Council to overturn the Audit Committee's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Audit Committee. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the Council no later than 30 days after the appeal is filed with the Clerk. The Council may override the decision of the Audit Committee to remove the City Auditor by a vote of two-thirds of the members of the Council. Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public subject to exclusions of the Public Records Act. This section shall not be subject to the provisions of section 11.1.

Section 111: Audit of Accounts of Officers
Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent

auditors who are in no way connected with the City. Upon the death, resignation or removal of any officer of the City, the City Auditor shall cause an audit and investigation of the accounts of such officer to be made and shall report to the Audit Committee. Either the Audit Committee or the Council may at any time provide for an independent examination or audit of the accounts of any or all officers or Departments of the City government. In case of death, resignation or removal of the City Auditor, the Audit Committee shall cause an audit to be made of his or her accounts. If, as a result of any such audit, an officer be found indebted to the City, the City Auditor, or other person making such audit, shall immediately give notice thereof to the Audit Committee, the Council, the Manager and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness. This section shall not be subject to the provisions of section 11.1.

Recommended Language for Official Ballot

Section 39.2: Office of City Auditor

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee and the Council. The City Auditor may be removed for cause by a vote of four-fifths of the members of the Audit Committee subject to the right of the City Auditor to appeal to the Council to overturn the Audit Committee's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Audit Committee. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the Council no later than 30 days after the appeal is filed with the Clerk. The Council may override the decision of the Audit Committee to remove the City Auditor by a vote of two-thirds of the members of the Council. Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public subject to exclusions of the Public Records Act. This section shall not be subject to the provisions of section 11.1.

Section 111: Audit of Accounts of Officers

Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent auditors who are in no way connected with the City. Upon the death, resignation or removal of any officer of the City, the City Auditor~~ and Comptroller~~ shall cause an audit and investigation of the accounts of such officer to be made and shall report to the ~~Manager and the Council~~Audit Committee. Either the Audit Committee or the Council ~~or the Manager~~ may at any time provide for an independent examination or audit of the accounts of any or all officers or Departments of the City government. In case of death, resignation or removal of the City Auditor~~ and Comptroller~~, the Audit Committee~~Manager~~ shall cause an audit to be made of his or her accounts. If, as a result of any such audit, an officer be found indebted to the City, the City Auditor~~ and Comptroller~~, or other person making such audit, shall immediately give notice thereof to the Audit Committee, the Council, the Manager and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness. This section shall not be subject to the provisions of section 11.1.

Recommendation #8: Balanced Budget

Summary of Recommendation

Amends Section 69 (Fiscal Year and Manager's Estimate) to require that the Manager propose and the Council adopt a balanced budget annually. The term "balanced budget" will mean sufficient funds are available to cover projected expenditures. The Manager shall monitor and report on the budget throughout the fiscal year and if he or she determines there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the Manager shall propose revisions to keep the budget balanced. Within 60 days of the Manager's submission of these revisions, the Council shall adopt them or offer alternative ones to ensure a balanced budget. The Manager and Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

Recommended Charter Language

Section 69: Fiscal Year and Manager's Estimate
The fiscal year of the City shall begin with the first day of July and shall end with the next succeeding 30th day of June. On or before the first meeting in May of each year the Manager shall prepare and submit to the Council a budget of the expense of conducting the affairs of the City for the ensuing fiscal year. Departments not under the Manager shall submit their annual budget estimates to the Manager, or to such official as he may designate, and in such form as he shall require on or before April 1 for transmittal in proper form by the Manager to the Council. Each fiscal year, the City Manager shall propose and the City Council shall adopt a balanced budget. As used in the City Charter, a balanced budget means that there is available funding from all sources sufficient to cover projected expenditures for said fiscal year. The budget shall include a summary outline of the fiscal policy of the City for the budget year, describing in connection therewith the important features of the budget plan; a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income and other means of financing the budget for the ensuing year, contrasted with corresponding figures for the current year. The classification of the estimate shall be as nearly uniform as possible for the main divisions of all Departments and shall furnish necessary detailed fiscal information.

The City Manager shall monitor and report on said budget throughout the fiscal year and if subsequent to the adoption of the annual balanced budget the City Manager determines that there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the City Manager shall propose revisions to the budget so that it is balanced. No longer than 60 days from the date of submittal by the City Manager of said revised budget, the City Council shall adopt the proposed revisions or offer alternative revisions to ensure the budget is balanced. The City Manager and City Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year.

The Council shall provide for printing a reasonable number of copies of the estimate thus prepared, for examination or distribution to citizens at least fifteen days before final passage. Copies shall also be furnished to the newspapers of the City and to each library thereof which is open to the public. The City shall post copies of the

budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

Recommended Language for Official Ballot

Section 69: Fiscal Year and Manager's Estimate

The fiscal year of the City shall begin with the first day of July and shall end with the next succeeding 30th day of June. On or before the first meeting in May of each year the Manager shall prepare and submit to the Council a budget of the expense of conducting the affairs of the City for the ensuing fiscal year. Departments not under the Manager shall submit their annual budget estimates to the Manager, or to such official as he may designate, and in such form as he shall require on or before April 1 for transmittal in proper form by the Manager to the Council. Each fiscal year, the City Manager shall propose and the City Council shall adopt a balanced budget. As used in the City Charter, a balanced budget means that there is available funding from all sources sufficient to cover projected expenditures for said fiscal year. The budget shall include a summary outline of the fiscal policy of the City for the budget year, describing in connection therewith the important features of the budget plan; a general budget summary setting forth the aggregate figures of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income and other means of financing the budget for the ensuing year, contrasted with corresponding figures for the current year. The classification of the estimate shall be as nearly uniform as possible for the main divisions of all Departments and shall furnish necessary detailed fiscal information.

The City Manager shall monitor and report on said budget throughout the fiscal year and if subsequent to the adoption of the annual balanced budget the City Manager determines that there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the City Manager shall propose revisions to the budget so that it is balanced. No longer than 60 days from the date of submittal by the City Manager of said revised budget, the City Council shall adopt the proposed revisions or offer alternative revisions to ensure the budget is balanced. The City Manager and City Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year.

The Council shall provide for printing a reasonable number of copies of the estimate thus prepared, for examination or distribution to citizens at least fifteen days before final passage. Copies shall also be furnished to the newspapers of the City and to each library thereof which is open to the public. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

Recommendation #9: Managed Competition

Summary of Recommendation

Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

Recommended Charter Language

Section 117: Unclassified and Classified Services

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(c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor."

(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.

Recommended Language for Official Ballot

Section 117: Unclassified and Classified Services

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(c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor."

<u>(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.</u>

Recommendation #10: City Attorney

Summary of Recommendation

Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

Recommended Charter Language

Section 40: City Attorney

(a) Qualifications and Election. The City Attorney must be qualified to practice in all the courts of the state. The City Attorney shall be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(b) Term Limit. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(c) Chief Legal Adviser. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.

(d) Prohibition on Outside Employment. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(e) Employment of Assistants. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Powers and Duties. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to

prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(g) Legal Documents. The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(h) Control of Litigation.
The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (i) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(i) Settlement of Litigation.

(1) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(j) Other Duties. The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(k) Employment of Other Legal Counsel.
(1) The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.
(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(l) Salary. The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year. In the event that another section of this Charter authorizes the Salary Setting Commission to establish salaries for all elected officials, the salary of the City Attorney shall be fixed in the manner prescribed by that section.

(m) Vacancy. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Recommended Language for Official Ballot

Section 40: City Attorney

(a) Qualifications and Election. The City Attorney must be qualified to practice in all the courts of the state. ~~At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A~~ The City Attorney shall ~~thereafter~~ be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(b) Term Limit. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(c) Chief Legal Adviser. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.

(d) Prohibition on Outside Employment. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(e) Employment of Assistants. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Powers and Duties. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(g) Legal Documents. The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(h) Control of Litigation.
The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (i) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the ~~Council~~client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the ~~Council~~client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(i) Settlement of Litigation.

(1) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(j) Other Duties. The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(k) Employment of Other Legal Counsel.
(1) The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.
(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(l) Salary. The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than $15,000.00 per year. In the event that another section of this Charter authorizes the Salary Setting Commission to establish salaries for all elected officials, the salary of the City Attorney shall be fixed in the manner prescribed by that section.

(m) Vacancy. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Recommendation #11: Salary Setting

Summary of Recommendation

Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

Recommended Charter Language

Section 12.1: Salaries of Elected Officials
On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt those salaries by ordinance. The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

[REPEAL SECTION 24.1 (MAYOR'S SALARY) IN ITS ENTIRETY.]

Section 40: City Attorney
###
The salary of the City Attorney shall be fixed as provided in section 12.1 and set forth in the annual appropriation ordinance, except that the salary of the City Attorney may not be decreased during a term of office, and in no event shall said salary be less than $15,000.00 per year.
###

Section 41.1: Salary Setting Commission
There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification of salaries for all elected City officials as provided in section 12.1 of this Charter. The City Manager shall provide from existing resources the staff and services necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:
(1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
(2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
(3) The benefits package accompanying the City office.
(4) Comparable data including the Consumer Price index and rates of inflation.
(5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

Recommended Language for Official Ballot

Section 12.1: ~~Councilmanic~~ Salaries of Elected Officials
On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of ~~members of the Council~~all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~shall adopt the~~ose~~ salaries by ordinance~~ as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount~~. The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

~~**Section 24.1: Mayor's Salary**~~
~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

Section 40: City Attorney
###
The salary of the City Attorney shall be fixed as provided in section 12.1~~by the Council~~ and set forth in the annual appropriation ordinance, ~~provided~~except that the salary of the City Attorney may not be decreased during a term of office, ~~but~~and in no event shall said salary be less than $15,000.00 per year.
###

Section 41.1: Salary Setting Commission
There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members.~~The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms.~~ The Salary Setting Commission shall recommend to the Council the establishment and modification~~enactment~~ of ~~an ordinance establishing~~salaries for all elected City officials~~ the Mayor and Council~~ as provided in section 12.1 of~~by~~ this Charter. The City Manager shall provide from existing resources the staff and services~~Council shall provide the funds~~ necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

(1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.

(2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.

(3) The benefits package accompanying the City office.

(4) Comparable data including the Consumer Price index and rates of inflation.

(5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.~~ The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Recommendation #12: Appointments to Outside Organizations

Summary of Recommendation

Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.

Recommended Charter Language

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
###
(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such cases the Mayor shall have the right to submit nominees for consideration.

Recommended Language for Official Ballot

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
###
(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. <u>In such cases the Mayor shall have the right to submit nominees for consideration.</u>

Recommendation #13: Mayor as Redevelopment Agency Executive Director

Summary of Recommendation

Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency.

Recommended Charter Language

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:
###
(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.

Recommended Language for Official Ballot

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:
###
<u>(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.</u>

Recommendation #14: Personnel Director

Summary of Recommendation

Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

Recommended Charter Language

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:
###
(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.
(17) Sole authority to dismiss the Personnel Director without recourse.

Recommended Language for Official Ballot

Section 265: The Mayor
###
(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:
###
(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

(17) Sole authority to dismiss the Personnel Director without recourse.

Recommendation #15: Composition of SDCERS Board of Administration

Summary of Recommendation

Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Kroll Report for a board with a different number of members and different affiliations.

Recommended Charter Language

[None proposed at this time; the Committee favors the status quo.]

Recommended Language for Official Ballot

[None proposed at this time; the Committee favors the status quo.]

LANGUAGE PROPOSED FOR ADDITION TO THE MUNICIPAL CODE

Recommendation #16: Audit Committee

The Audit Committee shall meet at least quarterly and shall have the following duties:

(a) Review, discuss and monitor the City's annual audited financial statements and any periodic financial statements with the City Manager, the City Auditor and the outside auditors.

(b) Based on its review and discussions with management and the outside auditors, recommend to the City Council whether the City's audited financial statements should be received by the City Council.

(c) Monitor changes to the City's auditing and accounting principles and practices as suggested by the outside auditors or management.

(d) Monitor the effectiveness of the City's internal controls disclosure controls and procedures in consultation with the City Manager, City Auditor and outside auditors.

(e) Review, discuss and monitor with the City Manager and the outside auditors:

(1) Any material financial or non-financial arrangements that do not appear on the City's financial statements;

(2) Any transactions or courses of dealing with parties related to the City that are significant in size or involve terms or other aspects that differ from those that would likely be negotiated with independent parties, and that are relevant to an understanding of the City's financial statements;

(3) Material financial risks that are designated as such by management or the outside auditors.

(f) Establish procedures for the receipt, retention and treatment of complaints received by the Audit Committee regarding misuse of City assets; and the confidential, anonymous submission by City's employees or members of the public of concerns regarding such misuse.

(g) Discuss and with the outside auditors annually or more often if necessary, a report by the outside auditors describing (i) the outside auditors' internal quality-control procedures, and (ii) any material issues raised by the most recent internal quality control review or peer review of the outside auditors, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more audits carried out by the outside auditors, and the steps taken to address those issues.

(h) Review the report by the outside auditors concerning: (i) all critical accounting policies and practices to be used; (ii) any deviation from GAAP in the City's financial statements; and (iii) any other material written communications between the outside auditors and the City's management.

(i) Review, discuss and monitor with the outside auditors annually or more often if deemed necessary by the Audit Committee, all relationships the outside auditors have with the City in order to evaluate the outside auditors' continued independence, and receive from the outside auditors on an annual basis a written statement regarding the auditors' independence.

The Audit Committee shall have no authority or responsibility to prepare or direct the preparation of the City's financial statements.

Recommendation #17: City Auditor

Pursuant to Charter Section 39.2, in addition to the duties enumerated therein, the City Auditor shall have the following powers and duties:

(a) The Audit Plan required in Charter Section 39.2 shall be based on a formal Risk Assessment of City operations. The Risk Assessment shall be performed in accordance with the Professional Practice of Internal Auditing. Those City activities, organizational units, or functional processes that have the highest level of inherent risk, as identified in the Risk Assessment, shall be included in the annual Audit Plan.

(b) On or before September 1 of every year, the City Auditor shall conduct an annual audit of the City's internal financial controls, and post audits of the fiscal transactions and accounts kept by or for the City and its departments, offices and agencies. Such audits shall include but not be limited to the evaluation of key controls over financial reporting, examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with Generally Accepted Government Auditing Standards in conjunction with the City Standards for the Professional Practice of City Auditing, and shall include tests of the accounting records and other auditing procedures as the City Auditor may deem necessary under the circumstances. The audits shall include the issuance of suitable reports of examination in order to assure that the Audit Committee, Council, City Manager, and the public will be informed as to the adequacy of the City's internal controls over financial reporting.

(c) Conduct performance audits, as appropriate, of any City department, office or agency. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:

(1) Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.

(2) Causes of inefficiencies or uneconomical practices, including inadequacies in information management systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.

(3) Whether the purposes and/or functions of the department or agency are being satisfactorily achieved.

(4) Whether objectives established by the City Manager, Council or other authorizing body are being met.

(5) Whether audit recommendations will improve efficiency and effectiveness.

(d) Conduct special audits and investigations. "Special audits" and "investigations" mean assignments of limited scope, intended to determine:

(1) The accuracy of information provided to the City Manager, Council, Audit Committee or public.

(2) The costs and consequences of recommendations made to the Council.

(3) The validity of accusations of material fraud, waste or abuse reported through the City's confidential hotline and other sources.

(4) Other information concerning the performance of City Departments, Offices or Agencies as requested by the City Manager or Audit Committee.

(e) Prepare and submit to the Audit Committee, at least quarterly, a written report of the City Auditor's activities and findings, together with any recommendations to improve the administration of the City;

(f) Perform other auditing functions, consistent with other provisions of the Charter, and prepare and submit such other reports, as may be requested by the City Manager, City Council or Audit Committee such as but not limited to:

(1) Assessing the compliance of City departments, agencies and vendors with appropriate City, State and Federal policies, procedures, laws, regulations, and contracts.

(2) Evaluating whether City assets are properly accounted for and safeguarded from losses.

(3) Reviewing the City's information technology systems to ensure electronic data is accurately processed and adequately safeguarded.