



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: January 11, 2008

IBA Report Number: 08-04

City Council Date: January 14, 2008

Item Number: 601

601
1/14

Charter Revision Proposals

OVERVIEW

In April 2007, the Mayor's Charter Review Committee was formed and began meeting to address modifications that may be needed in the City's Charter to implement specific reforms related to finances, roles of elected officials, and the Strong Mayor form of government. Their final report was issued on October 4, 2007, including 11 recommendations to be placed on the ballot in 2008.

The proposals were considered by the City Council's Rules Committee as well as the Budget & Finance Committee (Balanced Budget Proposal) and Audit Committee (Audit Committee and City Auditor Proposals). All committees forwarded the items to the City Council and these proposals are before the City Council for discussion and public hearing on January 14, 2007.

The IBA provided a review of many of the recommendations in our Report 07-102 (attached), certain items of which we will highlight in this report. In addition, a memorandum has been released by Council Members Peters, Faulconer and Madaffer with a package of recommendations to be proposed to the City Council at the hearing. This report will also review certain of those proposals in relation to the IBA's positions.

FISCAL/POLICY DISCUSSION

The IBA wishes to reiterate our support for the proposals made by the Charter Review Committee, and the three Council Members in their January 11 memo, inasmuch as they are the same, for the Balanced Budget (p. 5 of our attached report), Chief Financial Officer (p. 4), and Audit Committee/City Auditor Proposals (p. 4). With respect to the Audit Organization proposals, they are consistent with those the IBA has proposed since



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556

our response to the Kroll Report nearly 18 months ago, and we continue to find it a model that is accepted in best practices and suitable for implementation in San Diego. Most critically, it ensures adequate independence from management through the legislative appointment of all members of the Audit Committee, the involvement of the City Council and Audit Committee in appointment of the City Auditor, the establishment of the reporting relationship between the City Auditor and Audit Committee, and the right of termination vested in the Audit Committee and the City Council.

The IBA notes that we expressed concern about the Charter Review Committee's Sunset Revision proposal (p. 2 of the attached report), since it continued to call for a trial period of the Strong Mayor form of government, but provided for automatic permanence in 2014. As we stated then, it would be more appropriate to provide for automatic placement of the question on a ballot, if the continuation or extension of the trial period is desired. The proposal of the Council Members does provide for automatic placement on the ballot in June 2010, which would precede the current sunset of the form of government, and is consistent with the five year trial period the citizens voted on.

With respect to the veto override amendment, the IBA previously commented on the high override thresholds that would be required if the Committee's proposal were implemented with eight Council Members (p. 3). The proposal includes an override requirement of six of eight votes which is $\frac{3}{4}$ or 75% for standard items and an override requirement of seven of eight votes, or 88%, for supermajority items. The Committee addressed this by suggesting that the expansion of the Council should be done as soon as practicable, which would then result in reducing the override requirements below that unusually high threshold that would exist on an eight-member Council. As we remarked in our previous report, these thresholds would be unique among cities studied and the veto override requirements would be more consistent with national practices if implemented for a larger City Council. The proposal by the Council Members supports the veto override amendment for those items requiring only a majority vote, but not for supermajority items. While this veto override would be implemented on an eight-member Council initially, their proposal also includes a future vote to expand the City Council to nine members, which would allow for the more standard $\frac{2}{3}$, or 67%, veto override.

The Committee also made a proposal for the IBA that would codify our office's role relative to budget and legislative analysis, which we support. In addition, the three Council Members have included a proposal that would make permanent the Office of the IBA, recognizing the value of such an office regardless of the form of government. As we stated in our October 2007 report (p. 4), we support the permanency of this office as well and thus recommend both proposals to the City Council for approval.

CONCLUSION

The IBA continues to support the charter amendments on Balanced Budget, Chief Financial Officer, and Audit Committee/City Auditor, as well as the proposal for the Office of the IBA as proposed by the Charter Review Committee and the Council Members. The IBA had previously suggested automatic placement on the ballot for a vote to make permanent the form of government. This is found in the proposal of the Council Members, but not the Committee. Finally, we concur with the Council Members' position that the higher veto override threshold for supermajority items is undesirable, and concur with both proposals to hasten the expansion of the Council to make the threshold for standard items more in line with national practice.



Penni Takade
Deputy Director



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment



**THE CITY OF SAN DIEGO
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

Date Issued: October 18, 2007

IBA Report Number: 07-102

Rules Committee Agenda Date: October 24, 2007

Item Number: 1

Subject: Charter Review Committee Recommendations

OVERVIEW

As detailed in the Final Report of the 2007 San Diego Charter Review Committee, the group was created by the Mayor and charged with specific tasks related to Charter review approximately six months ago. One or more representatives of the Office of the IBA attended each meeting of the Charter Review Committee and its subcommittees in order to provide research and information, give input on behalf of our office, and observe the process and dialogue in order to inform the comments we would make to the City Council.

In this report, we will only discuss items recommended in the Charter Review Committee's Final Report for which the IBA has taken a position and/or wishes to make additional information available. The following are the Committee's recommendation areas which will be discussed in this report:

- Sunset Revision
- Eleven-Member City Council
- Veto Override
- Independent Budget Analyst
- Chief Financial Officer
- Audit Committee and City Auditor
- Balanced Budget

In addition, the IBA will make another suggestion, on the matter of Mayoral appointment of a City Manager/Chief Operating Officer, in this report.



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101
Tel (619) 236-6555 Fax (619) 236-6556

FISCAL/POLICY DISCUSSION

Sunset Revision

The Charter Review Committee has recommended that the trial period for the Strong Mayor form of government be extended by four years and that it shall be made permanent unless other action is taken. The IBA wishes to point out that, although the committee has characterized this as an extended trial period, it is actually being made permanent through this proposal. Generally in a trial, a decision on the question is required at the end of the trial period. This provision does not require the question to be called at the end of the trial, which effectively means it is permanent if passed by the voters next year. The recommendation does allow that the voters may act to alter or terminate this at any time, however this is a right of the citizens regardless of the permanent or temporary nature of any provision in the Charter.

The IBA suggests it would be more candid to let the public know that this is effectively making the Strong Mayor form permanent, if this recommendation is approved. Alternately, if a trial period is still desired, a provision for automatic placement on a prior ballot should be included. The ballot should be provided for sufficiently in advance to ensure that the result may be certified by the Secretary of State prior to the actual expiration of the trial period.

Eleven-Member City Council

The IBA takes no position on the recommendation to expand the City Council. However, as readers will note, the recommendation is not specific as to when the expansion should take place. During discussion, some members of the subcommittee and committee expressed concerns about the cost of redistricting in the near future (among other concerns) when the decennial redistricting as required by the Charter would follow soon after. However, some members supported an immediate redistricting process notwithstanding the added cost and effort. Therefore, the committee ultimately decided to let the City Council choose the most appropriate time to perform the redistricting necessary for expansion.

The IBA has recently attempted to quantify the actual cost of a redistricting effort. Based on the 2002 Annual Budget, the City budgeted almost \$162,000 for the 2000 Redistricting Commission (RC), which comprised two part-time staff at approximately \$72,000 and non-personnel expense. In addition, the IBA is aware that the RC utilized the services of a Senior Planner and that the City Clerk provided Records to take minutes. These costs are not captured in the allocation above and there may be further staff or material support that the IBA has been unable to identify. The IBA believes this information can be valuable in considering the timeframe for redistricting to expand the Council, should this recommendation be forwarded. However, we would note that these are budgeted, not actual costs. The IBA was unable to find records for the actual costs associated with the 2000 RC.

In addition, the 2000 RC made a recommendation for future RC's budget requirements in their final report in 2001. The 2000 RC suggested the budget should include funding for three full-time staff, consultants, legal counsel, and various supplies and equipment. This closely mirrors a proposal made by the 2000 RC in December 2000 (Attachment I). The 12 month budget proposed \$750,000 for five staff, consultants and related costs. The IBA estimates that a proposal for just three staff could be reduced significantly. However, considering the increase in cost for salaries and materials since 2000, we suggest that the cost of supporting an RC effort, as envisioned by the 2000 RC, could still be between \$650,000 - \$700,000.

The operating costs for the additional districts may be as much as \$3 million annually, if current district budgets are retained. As discussed by the committee, the cost of this proposal is a trade-off for the additional representation citizens would enjoy.

Veto Override

During the discussion of increasing the threshold for overriding the Mayor's veto, the committee considered linking the issue to the expansion of the City Council. This proposal ultimately failed to garner a majority of votes amongst the subcommittee or committee. However, the IBA believes that further discussion of this issue may be warranted, both due to the split vote at the committee and due to the unique situation it would create for veto override. As described in the report, implementing the two-thirds veto override for an eight-member City Council would in reality require a three-quarters override. While two-thirds results in percentages greater than 66.7% in some cities, as the report references, a 75% requirement would be a uniquely high hurdle for regular resolutions and ordinances. Furthermore, for special ordinances that currently require six votes to pass, the override could only be accomplished with seven of eight votes or 85.7%.

The IBA suggests that, if the override and 11 member Council recommendations are approved, the Council may wish to consider hastening the expansion of the Council and linking it to the new override implementation. The expansion of the Council may be accomplished through the redistricting process, as described. Alternately the appointment of a temporary at-large member may be considered until a full redistricting can be completed and new Council Member(s) elected.

Independent Budget Analyst

The IBA supports the language recommended by the Charter Review Committee with respect to this office. The substantive addition recommended clarifies within the Charter that the work of the IBA may include both budgetary and policy analysis, as currently provided by the Municipal Code. We believe that this language clarifies the nature of the independent work performed by the IBA while maintaining the City Council's authority to set powers and duties of the office in the Municipal Code.

The committee also gave some consideration to changing the name of the IBA to incorporate the legislative analysis role of the office, and making the office permanent regardless of the form of government the City may have. Ultimately, the committee has placed it in the category for further study. The IBA would support the permanence of this office if studied in the future, or if taken under consideration for this ballot, recognizing its value in either form of government.

Chief Financial Officer (CFO)

The IBA supports the recommendation of the Charter Review Committee to place the CFO in the Charter and to assign all comptroller duties to this position as part of the proposed split of the Auditor and Comptroller's office and the appropriate assignment of audit duties to the City Auditor (see discussion below). Note that under this amendment, the CFO shall be appointed by the City Manager (Mayor) and confirmed by the City Council, which is not the case at this time. With this amendment, the City Treasurer, a subordinate of the CFO, will no longer require confirmation by the City Council, which the IBA finds reasonable.

Audit Committee and City Auditor

As the IBA has recommended since our first report on the topic (IBA Report 06-35 dated 8/30/06) we believe the Audit Committee and City Auditor should be considered together, as they comprise the entire Audit Organization of the City. This will ensure that the most independent and effective infrastructure is in place to fulfill this purpose, one of the most important oversight functions in City government.

The recommendation by the committee is to establish a five member Audit Committee, two members of which are City Council Members (one of whom shall serve as chair) and three members are citizens with financial expertise, appointed by the Council. The committee has included a screening process that closely mirrors that proposed by the IBA in our original Report 06-35, for the appointment of these citizen members. The screening committee shall be comprised of one member of the City Council, the CFO, City Attorney, the IBA and two outside financial experts, who will then provide a pool of qualified candidates for Council consideration.

The City Auditor is appointed by the Mayor, in consultation with the Audit Committee, confirmed by the City Council and reports to the Audit Committee. The City Auditor shall be appointed for a 10 year term and may be terminated by the Audit Committee with a right to appeal to the City Council.

The recommendations forwarded by the committee mirror those by the IBA in our original report 15 months ago, except that the Audit Committee has been expanded from three to five members. The IBA continues to support this model for the Audit Organization for the City of San Diego.

Balanced Budget

The IBA supports the recommendation of the Charter Review Committee to clarify and strengthen a balanced budget requirement in the City Charter. The IBA worked with the subcommittee and the CFO to propose and scrutinize potential language for consideration. The language ultimately approved by the committee, which was proposed by the IBA and CFO, recognizes the roles of both the executive and legislative branches in the budget process and ensures that a balanced budget is adopted and maintained throughout the fiscal year.

City Manager/Chief Operating Officer

At the meeting of October 15, 2007, the City Council confirmed the Mayor's appointment of Jay Goldstone as Chief Operating Officer for the City of San Diego. During the discussion, a point of possible conflict in the City Charter was raised. While Article XV confers all the duties of the City Manager on the Mayor, it later allows the Mayor to appoint, direct and dismiss the City Manager (Section 265(b)(7) – (9)). Because this creates confusion, and because the current Mayor does not use the term City Manager, we suggest that the Council may wish to replace the words "City Manager" in the aforementioned sections with "Chief Operating Officer" or a similar term.

CONCLUSION

In this report, the IBA has noted support for recommendations of the Charter Review Committee including language for the IBA, CFO, Audit Committee and City Auditor, and the balanced budget requirement. While the IBA takes no position on the recommendation to expand the City Council, we have attempted to provide some historical information about the cost of the last redistricting effort and suggestions for expanding the Council in light of the increased veto override proposal. Finally, the IBA has made two recommendations for modifications:

1. If approving the committee's sunset revision proposal, include language that acknowledges that the Strong Mayor form of government is being made permanent. If there is a desire to keep a true trial period, provide for automatic placement on the ballot prior to the expiration of the period.
2. Consider amending the Section 265(b)(7)-(9) references to a City Manager by the Mayor to appointment of a Chief Operating Officer to reduce confusion with previous articles.



Penni Takade
Deputy Director



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: December 15, 2000

TO: Honorable Mayor and City Councilmembers

FROM: George I. Loveland, Acting Assistant City Manager

SUBJECT: Year 2000 Redistricting Commission Budget

RECEIVED
DEC 21 11:24
SAN DIEGO, CALIF.

On October 6, 2000 seven commissioners were appointed to the 2000 Redistricting Commission, whose task is to redistrict the City into eight Council districts, each containing one-eighth of the City's total population to the extent that is practical. According to the City Charter the Commission must adopt a budget within 60 days of appointment, which includes a Chief of Staff who will serve the Commission, and the use of existing City staff to the extent possible. The budget is submitted to the Appointing Authority, which is a panel of three retired Superior Court Judges, for approval and then to the City Council for consideration. The Council must appropriate adequate funds to the Commission and to the City Clerk to carry out their duties.

At this time, the Commission has submitted a one-year budget totaling \$750,000 to the Appointing Authority for review on December 21, 2000. Based on direction provided by the Redistricting Commission, City staff assisted in the preparation of the proposed budget. Given staffing and salary guidelines, the budget outlines City positions that are comparable to the Chief of Staff, Assistant to the Chief, and three staff members. For example, the Chief of Staff's proposed salary and benefits is comparable to a Department Director. The budget includes support costs for the five positions requested, such as office space rent, furniture and computer equipment, as well as costs to perform the redistricting tasks, such as City staff support, mapping and graphic services, meeting expenses, and office supplies.

Attached for your advanced review is copy of the Redistricting Commission Proposed Budget. Also attached is the Chief of Staff job announcement that is currently being advertised in local publications, such as the San Diego Union-Tribune, the San Diego Asian Journal, Voice and Viewpoint, La Prensa, El Sol, Jobs Available, Uptown Publication, and Filipino Press.

Respectfully Submitted,



George I. Loveland

GL/klm

Attachments: 1. Redistricting Commission Proposed Budget
2. Chief of Staff Job Announcement

**City of San Diego
Year 2000 Redistricting Commission
Proposed Budget**

	12 Month Budget	18 Month Budget	Assumptions
1.00 Chief of Staff	143,490	215,235	Average salary (\$113,941) and benefits (\$29,549) comparable to a Department Director
1.00 Assistant to Chief of Staff	104,286	156,429	Average salary (\$81,153) and benefits (\$23,133) comparable to a Program Manager
3.00 Staff Members	229,785	344,678	Average salary (\$60,480) and benefits (\$16,115) comparable to a Senior Mgmt Analyst
Consulting/Legal Services	50,000	50,000	Legal Services beyond City Attorney support or other Consulting Services if needed
As-Needed Interpreter Services	5,400	8,100	Interpreter services for meetings, if necessary
City Clerk Support	20,000	30,000	City Clerk support and legislative recorder services
City Attorney Support	20,751	31,127	4 hours per week/2.24 positions
Manager's Office Support	9,804	14,706	4 hours per week/1.00 position
Office Supplies	5,000	7,500	Estimate \$1,000 per person
Postage	1,020	1,530	Assumes 3,000 pieces of mail per year at \$0.34
Transportation Allowance - Parking	2,250	3,375	Parking Stamps for Commissioners at the Concourse Parkade
Transportation Allowance - Mileage	950	1,425	Mileage reimbursement for 5.00 staff (city employees). \$.38/mile @ 500 miles/person
Advertising/Noticing	2,500	3,750	Advertising and noticing for events and meetings
Recording Equipment & Supplies	664	716	Recorder and two tapes per meeting
Print Shop Services	5,000	7,500	Photocopy costs, printing, graphic services, and preparation of informational brochures
Mapping Services	50,000	50,000	Mapping and overlay services
Redistricting/Mapping Software	7,000	7,000	AutoBound redistricting software for 2 systems @ \$3,500 each
Meeting Expenses	1,025	1,350	Refreshments for 26 Commission mtgs/year and 15 community mtgs @ \$25/mtg
Rent	19,035	28,553	225 sq.ft. per person @ \$1.41 sq.ft./month (includes gas, electric, common areas, etc.)
Office Furniture	8,700	8,700	5 desks, 5 exec chairs, 8 side chairs, 5 filing cabinets, 5 bookcases, 5 calculators
Modular/Cubicle Furniture	4,000	4,000	Three 8x8 cubicles (panels only, no furniture) clustered together with electrical power
Network Ready Computers	13,750	13,750	Computer, monitor and software installation for 5 staff people
Network Laser Printer	2,000	2,000	Mid-range Laser Printer
Printer Toner Cartridges	1,000	1,500	Assume need to replace 10/year @ \$100 each
Fax Machine	1,000	1,000	Mid-range Fax Machine
Phones	1,225	1,225	5-six button line phones, purchase and installation
Scanner	750	750	Mid-range Scanner
Network Access Charges	11,542	17,313	Yearly City access charges for Computers, Printer, Phones, Fax and Scanner
Hardware Maintenance	850	1,275	Estimate \$170 per computer
SDDPC Application Support/Labor	3,950	5,925	Estimate 10 hours/year per PC @ \$79/hour
Cell Phone	357	536	One cell phone for Chief of Staff (free phone, \$29.75/month)
Pagers	153	153	Two pagers for Chief of Staff and Assistant Chief (Apollo Pocsag alpha-numeric)
Contingency Reserve	25,000	25,000	For personnel negotiations or non-personnel emergencies (approx 3% of 1 year budget)
TOTAL	\$ 752,237	\$ 1,046,099	

Note: If needed, a Laptop and Proxima Projector can be borrowed from the City's Information Technology Dept.



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

December 1, 2000

Page 1 of 2

The Redistricting Commission for the City of San Diego is accepting applications for the position of:

Redistricting Commission
Chief of Staff

BACKGROUND INFORMATION

San Diego is the sixth largest city in the United States with a population of over 1.2 million citizens. San Diego operates under a Council-Manager form of government. The Council consists of a Mayor elected at large and eight Council members elected from districts.

The Redistricting Commission, subject to the provisions of the City Charter relating to referendum and initiative powers of the people, has the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council. The Redistricting Commission must abide by San Diego City Charter, Article II, Section 5.1

THE POSITION

There is currently one vacancy for Chief of Staff. The position reports directly to the Redistricting Commission and will perform the following duties:

- (1) Assist the Redistricting Commissioners and provide technical and demographic assistance to analyze and formulate redistricting plans and maps.
- (2) Compile databases of election returns and demographic characteristics at the precinct/census tract level or other unit of analysis, as needed.
- (3) Compile expert reports, studies and court findings pertaining to redistricting.
- (4) Compile cases, statutes, resolutions, reports, learned treatises, etc. reflecting the existence of past and continuing discrimination in related to redistricting.
- (5) Produce informational/educational materials relevant to redistricting.
- (6) Work with the City Attorney's Office to obtain legal assistance where necessary to insure compliance with the Constitution, Voting Rights Act, Brown Act, and City of San Diego Charter.
- (7) Select, train and supervise subordinate staff.

NOTE: Length of employment is from February 2001 until the redistricting plan adopted by the Commission becomes effective and any and all legal and referendum challenges have been resolved.



DIVERSITY
BRINGS US ALL TOGETHER



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

Page 2 of 2

QUALIFICATIONS

The ideal candidate will have the following:

- Excellent verbal communication, writing and computer skills.
- Strong knowledge of the City's budget process.
- Strong management/supervisory skills.
- Ability to handle multiple assignments and work well under pressure.
- Be a self-starter with a high degree of initiative.
- Good judgement, a high degree of political acumen and effective interpersonal skills.
- Ability to deal with public officials, community leaders, the general public and others in a tactful manner.
- A working knowledge of the City of San Diego and it's diverse communities.
- A strong background in municipal government is highly desirable.
- Relevant experience, education and training which would provide the candidate with the knowledge, skills and abilities required to perform assigned duties.

COMPENSATION

- Salary to be negotiated and is contingent on qualifications.
- Generous benefits package available including various retirement savings, health insurance and life insurance options.

SELECTION PROCESS

Those interested in applying for the position should forward a letter of interest, current resume, three writing samples, and the names and telephone numbers of three professional references to: City Clerk's Office, Attn: Bonnie Stone, Elections Analyst, 202 C Street, San Diego, CA 92101 no later than 5:00p.m. on Monday January 15, 2001.

After a review of the submitted materials, a select number of candidates will be invited to participate in an interview.

The City of San Diego is an Equal Opportunity Employer.



DIVERS
BRINGS US ALL TO

COMMITTEE ACTION SHEET

#601
1/14/08

COUNCIL DOCKET OF

Feb 14, 2008 - Special meeting

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Recommended Changes to the City Charter

☒ Reviewed ☐ Initiated By Budget On 1/09/08 Item No. 3

RECOMMENDATION TO:

Forward the Chief Operating Officer's recommendation without committee recommendation to the full Council, with the understanding that the City Attorney will provide additional information regarding his concerns to the Council.

VOTED YEA: Atkins, Faulconer, Frye, Madaffer

VOTED NAY:

NOT PRESENT: Hueso

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Independent Budget Analyst Report No. 08-02; Lisa Briggs' January 2, 2008, memorandum

COUNCIL COMMITTEE CONSULTANT

Michael Frankland

**OFFICE OF INDEPENDENT BUDGET ANALYST
CITY OF SAN DIEGO
M E M O R A N D U M**

No. 08-2

DATE: January 2, 2008
TO: Honorable Members of the Budget & Finance Committee
FROM: Andrea Tevlin, Independent Budget Analyst *Andrea T.*
SUBJECT: Charter Revision Proposals

On Wednesday, January 9, 2008 the Budget & Finance Committee will consider a revision to the City Charter proposed by the Mayor's Charter Review Committee to adopt a balanced budget requirement. With this memo, the IBA is providing our report to the Rules Committee on the final recommendations of the Charter Review Committee. For a discussion of our position on the Balanced Budget Amendment, please see p. 5. As stated in our report, the IBA supports this proposal that recognizes the roles of both the executive and legislative branches in the budget process and ensures that a balanced budget is adopted and maintained throughout the fiscal year.

Attachment



**THE CITY OF SAN DIEGO
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

Date Issued: October 18, 2007

IBA Report Number: 07-102

Rules Committee Agenda Date: October 24, 2007

Item Number: 1

Subject: Charter Review Committee Recommendations

OVERVIEW

As detailed in the Final Report of the 2007 San Diego Charter Review Committee, the group was created by the Mayor and charged with specific tasks related to Charter review approximately six months ago. One or more representatives of the Office of the IBA attended each meeting of the Charter Review Committee and its subcommittees in order to provide research and information, give input on behalf of our office, and observe the process and dialogue in order to inform the comments we would make to the City Council.

In this report, we will only discuss items recommended in the Charter Review Committee's Final Report for which the IBA has taken a position and/or wishes to make additional information available. The following are the Committee's recommendation areas which will be discussed in this report:

- Sunset Revision
- Eleven-Member City Council
- Veto Override
- Independent Budget Analyst
- Chief Financial Officer
- Audit Committee and City Auditor
- Balanced Budget

In addition, the IBA will make another suggestion, on the matter of Mayoral appointment of a City Manager/Chief Operating Officer, in this report.



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556

FISCAL/POLICY DISCUSSION

Sunset Revision

The Charter Review Committee has recommended that the trial period for the Strong Mayor form of government be extended by four years and that it shall be made permanent unless other action is taken. The IBA wishes to point out that, although the committee has characterized this as an extended trial period, it is actually being made permanent through this proposal. Generally in a trial, a decision on the question is required at the end of the trial period. This provision does not require the question to be called at the end of the trial, which effectively means it is permanent if passed by the voters next year. The recommendation does allow that the voters may act to alter or terminate this at any time, however this is a right of the citizens regardless of the permanent or temporary nature of any provision in the Charter.

The IBA suggests it would be more candid to let the public know that this is effectively making the Strong Mayor form permanent, if this recommendation is approved. Alternately, if a trial period is still desired, a provision for automatic placement on a prior ballot should be included. The ballot should be provided for sufficiently in advance to ensure that the result may be certified by the Secretary of State prior to the actual expiration of the trial period.

Eleven-Member City Council

The IBA takes no position on the recommendation to expand the City Council. However, as readers will note, the recommendation is not specific as to when the expansion should take place. During discussion, some members of the subcommittee and committee expressed concerns about the cost of redistricting in the near future (among other concerns) when the decennial redistricting as required by the Charter would follow soon after. However, some members supported an immediate redistricting process notwithstanding the added cost and effort. Therefore, the committee ultimately decided to let the City Council choose the most appropriate time to perform the redistricting necessary for expansion.

The IBA has recently attempted to quantify the actual cost of a redistricting effort. Based on the 2002 Annual Budget, the City budgeted almost \$162,000 for the 2000 Redistricting Commission (RC), which comprised two part-time staff at approximately \$72,000 and non-personnel expense. In addition, the IBA is aware that the RC utilized the services of a Senior Planner and that the City Clerk provided Records to take minutes. These costs are not captured in the allocation above and there may be further staff or material support that the IBA has been unable to identify. The IBA believes this information can be valuable in considering the timeframe for redistricting to expand the Council, should this recommendation be forwarded. However, we would note that these are budgeted, not actual costs. The IBA was unable to find records for the actual costs associated with the 2000 RC.

In addition, the 2000 RC made a recommendation for future RC's budget requirements in their final report in 2001. The 2000 RC suggested the budget should include funding for three full-time staff, consultants, legal counsel, and various supplies and equipment. This closely mirrors a proposal made by the 2000 RC in December 2000 (Attachment I). The 12 month budget proposed \$750,000 for five staff, consultants and related costs. The IBA estimates that a proposal for just three staff could be reduced significantly. However, considering the increase in cost for salaries and materials since 2000, we suggest that the cost of supporting an RC effort, as envisioned by the 2000 RC, could still be between \$650,000 - \$700,000.

The operating costs for the additional districts may be as much as \$3 million annually, if current district budgets are retained. As discussed by the committee, the cost of this proposal is a trade-off for the additional representation citizens would enjoy.

Veto Override

During the discussion of increasing the threshold for overriding the Mayor's veto, the committee considered linking the issue to the expansion of the City Council. This proposal ultimately failed to garner a majority of votes amongst the subcommittee or committee. However, the IBA believes that further discussion of this issue may be warranted, both due to the split vote at the committee and due to the unique situation it would create for veto override. As described in the report, implementing the two-thirds veto override for an eight-member City Council would in reality require a three-quarters override. While two-thirds results in percentages greater than 66.7% in some cities, as the report references, a 75% requirement would be a uniquely high hurdle for regular resolutions and ordinances. Furthermore, for special ordinances that currently require six votes to pass, the override could only be accomplished with seven of eight votes or 85.7%.

The IBA suggests that, if the override and 11 member Council recommendations are approved, the Council may wish to consider hastening the expansion of the Council and linking it to the new override implementation. The expansion of the Council may be accomplished through the redistricting process, as described. Alternately the appointment of a temporary at-large member may be considered until a full redistricting can be completed and new Council Member(s) elected.

Independent Budget Analyst

The IBA supports the language recommended by the Charter Review Committee with respect to this office. The substantive addition recommended clarifies within the Charter that the work of the IBA may include both budgetary and policy analysis, as currently provided by the Municipal Code. We believe that this language clarifies the nature of the independent work performed by the IBA while maintaining the City Council's authority to set powers and duties of the office in the Municipal Code.

The committee also gave some consideration to changing the name of the IBA to incorporate the legislative analysis role of the office, and making the office permanent regardless of the form of government the City may have. Ultimately, the committee has placed it in the category for further study. The IBA would support the permanence of this office if studied in the future, or if taken under consideration for this ballot, recognizing its value in either form of government.

Chief Financial Officer (CFO)

The IBA supports the recommendation of the Charter Review Committee to place the CFO in the Charter and to assign all comptroller duties to this position as part of the proposed split of the Auditor and Comptroller's office and the appropriate assignment of audit duties to the City Auditor (see discussion below). Note that under this amendment, the CFO shall be appointed by the City Manager (Mayor) and confirmed by the City Council, which is not the case at this time. With this amendment, the City Treasurer, a subordinate of the CFO, will no longer require confirmation by the City Council, which the IBA finds reasonable.

Audit Committee and City Auditor

As the IBA has recommended since our first report on the topic (IBA Report 06-35 dated 8/30/06) we believe the Audit Committee and City Auditor should be considered together, as they comprise the entire Audit Organization of the City. This will ensure that the most independent and effective infrastructure is in place to fulfill this purpose, one of the most important oversight functions in City government.

The recommendation by the committee is to establish a five member Audit Committee, two members of which are City Council Members (one of whom shall serve as chair) and three members are citizens with financial expertise, appointed by the Council. The committee has included a screening process that closely mirrors that proposed by the IBA in our original Report 06-35, for the appointment of these citizen members. The screening committee shall be comprised of one member of the City Council, the CFO, City Attorney, the IBA and two outside financial experts, who will then provide a pool of qualified candidates for Council consideration.

The City Auditor is appointed by the Mayor, in consultation with the Audit Committee, confirmed by the City Council and reports to the Audit Committee. The City Auditor shall be appointed for a 10 year term and may be terminated by the Audit Committee with a right to appeal to the City Council.

The recommendations forwarded by the committee mirror those by the IBA in our original report 15 months ago, except that the Audit Committee has been expanded from three to five members. The IBA continues to support this model for the Audit Organization for the City of San Diego.

Balanced Budget

The IBA supports the recommendation of the Charter Review Committee to clarify and strengthen a balanced budget requirement in the City Charter. The IBA worked with the subcommittee and the CFO to propose and scrutinize potential language for consideration. The language ultimately approved by the committee, which was proposed by the IBA and CFO, recognizes the roles of both the executive and legislative branches in the budget process and ensures that a balanced budget is adopted and maintained throughout the fiscal year.

City Manager/Chief Operating Officer

At the meeting of October 15, 2007, the City Council confirmed the Mayor's appointment of Jay Goldstone as Chief Operating Officer for the City of San Diego. During the discussion, a point of possible conflict in the City Charter was raised. While Article XV confers all the duties of the City Manager on the Mayor, it later allows the Mayor to appoint, direct and dismiss the City Manager (Section 265(b)(7) – (9)). Because this creates confusion, and because the current Mayor does not use the term City Manager, we suggest that the Council may wish to replace the words "City Manager" in the aforementioned sections with "Chief Operating Officer" or a similar term.

CONCLUSION

In this report, the IBA has noted support for recommendations of the Charter Review Committee including language for the IBA, CFO, Audit Committee and City Auditor, and the balanced budget requirement. While the IBA takes no position on the recommendation to expand the City Council, we have attempted to provide some historical information about the cost of the last redistricting effort and suggestions for expanding the Council in light of the increased veto override proposal. Finally, the IBA has made two recommendations for modifications:

1. If approving the committee's sunset revision proposal, include language that acknowledges that the Strong Mayor form of government is being made permanent. If there is a desire to keep a true trial period, provide for automatic placement on the ballot prior to the expiration of the period.
2. Consider amending the Section 265(b)(7)-(9) references to a City Manager by the Mayor to appointment of a Chief Operating Officer to reduce confusion with previous articles.



Penni Takade
Deputy Director



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

CITY OF SAN DIEGO
MEMORANDUM

Attachment 1
RECEIVED
03 DEC 21 10:10:24
X SAN DIEGO, CALIF.


DATE: December 15, 2000
TO: Honorable Mayor and City Councilmembers
FROM: George I. Loveland, Acting Assistant City Manager
SUBJECT: Year 2000 Redistricting Commission Budget

On October 6, 2000 seven commissioners were appointed to the 2000 Redistricting Commission, whose task is to redistrict the City into eight Council districts, each containing one-eighth of the City's total population to the extent that is practical. According to the City Charter the Commission must adopt a budget within 60 days of appointment, which includes a Chief of Staff who will serve the Commission, and the use of existing City staff to the extent possible. The budget is submitted to the Appointing Authority, which is a panel of three retired Superior Court Judges, for approval and then to the City Council for consideration. The Council must appropriate adequate funds to the Commission and to the City Clerk to carry out their duties.

At this time, the Commission has submitted a one-year budget totaling \$750,000 to the Appointing Authority for review on December 21, 2000. Based on direction provided by the Redistricting Commission, City staff assisted in the preparation of the proposed budget. Given staffing and salary guidelines, the budget outlines City positions that are comparable to the Chief of Staff, Assistant to the Chief, and three staff members. For example, the Chief of Staff's proposed salary and benefits is comparable to a Department Director. The budget includes support costs for the five positions requested, such as office space rent, furniture and computer equipment, as well as costs to perform the redistricting tasks, such as City staff support, mapping and graphic services, meeting expenses, and office supplies.

Attached for your advanced review is copy of the Redistricting Commission Proposed Budget. Also attached is the Chief of Staff job announcement that is currently being advertised in local publications, such as the San Diego Union-Tribune, the San Diego Asian Journal, Voice and Viewpoint, La Prensa, El Sol, Jobs Available, Uptown Publication, and Filipino Press.

Respectfully Submitted,


George I. Loveland

GL/kim

Attachments: 1. Redistricting Commission Proposed Budget
2. Chief of Staff Job Announcement

**City of San Diego
Year 2000 Redistricting Commission
Proposed Budget**

	12 Month Budget	18 Month Budget	Assumptions
1.00 Chief of Staff	143,490	215,235	Average salary (\$113,941) and benefits (\$29,549) comparable to a Department Director
1.00 Assistant to Chief of Staff	104,286	156,429	Average salary (\$81,153) and benefits (\$23,133) comparable to a Program Manager
3.00 Staff Members	229,785	344,678	Average salary (\$60,480) and benefits (\$16,115) comparable to a Senior Mgmt Analyst
Consulting/Legal Services	50,000	50,000	Legal Services beyond City Attorney support or other Consulting Services if needed
As-Needed Interpreter Services	5,400	8,100	Interpreter services for meetings, if necessary
City Clerk Support	20,000	30,000	City Clerk support and legislative recorder services
City Attorney Support	20,751	31,127	4 hours per week/2.24 positions
Manager's Office Support	9,804	14,706	4 hours per week/1.00 position
Office Supplies	5,000	7,500	Estimate \$1,000 per person
Postage	1,020	1,530	Assumes 3,000 pieces of mail per year at \$0.34
Transportation Allowance - Parking	2,250	3,375	Parking Stamps for Commissioners at the Concourse Parkade
Transportation Allowance - Mileage	950	1,425	Mileage reimbursement for 5.00 staff (city employees): \$.38/mile @ 500 miles/person
Advertising/Noticing	2,500	3,750	Advertising and noticing for events and meetings
Recording Equipment & Supplies	664	716	Recorder and two tapes per meeting
Print Shop Services	5,000	7,500	Photocopy costs, printing, graphic services, and preparation of informational brochures
Mapping Services	50,000	50,000	Mapping and overlay services
Redistricting/Mapping Software	7,000	7,000	AutoBound redistricting software for 2 systems @ \$3,500 each
Meeting Expenses	1,025	1,350	Refreshments for 26 Commission mtgs/year and 15 community mtgs @ \$25/mtg
Rent	19,035	28,553	225 sq.ft. per person @ \$1.41 sq.ft./month (includes gas, electric, common areas, etc.)
Office Furniture	8,700	8,700	5 desks, 5 exec chairs, 8 side chairs, 5 filing cabinets, 5 bookcases, 5 calculators
Modular/Cubicle Furniture	4,000	4,000	Three 8x8 cubicles (panels only, no furniture) clustered together with electrical power
Network Ready Computers	13,750	13,750	Computer, monitor and software installation for 5 staff people
Network Laser Printer	2,000	2,000	Mid-range Laser Printer
Printer Toner Cartridges	1,000	1,500	Assume need to replace 10/year @ \$100 each
Fax Machine	1,000	1,000	Mid-range Fax Machine
Phones	1,225	1,225	5-six button line phones, purchase and installation
Scanner	750	750	Mid-range Scanner
Network Access Charges	11,542	17,313	Yearly City access charges for Computers, Printer, Phones, Fax and Scanner
Hardware Maintenance	850	1,275	Estimate \$170 per computer
SDDPC Application Support/Labor	3,950	5,925	Estimate 10 hours/year per PC @ \$79/hour
Cell Phone	357	536	One cell phone for Chief of Staff (free phone, \$29.75/month)
Pagers	153	153	Two pagers for Chief of Staff and Assistant Chief (Apollo Pocsag alpha-numeric)
Contingency Reserve	25,000	25,000	For personnel negotiations or non-personnel emergencies (approx 3% of 1 year budget)
TOTAL	\$ 752,237	\$ 1,046,099	

ote: If needed, a Laptop and Proxima Projector can be borrowed from the City's Information Technology Dept.



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

December 1, 2000

Page 1 of 2

The Redistricting Commission for the City of San Diego is accepting applications for the position of:

Redistricting Commission
Chief of Staff

BACKGROUND INFORMATION

San Diego is the sixth largest city in the United States with a population of over 1.2 million citizens. San Diego operates under a Council-Manager form of government. The Council consists of a Mayor elected at large and eight Council members elected from districts.

The Redistricting Commission, subject to the provisions of the City Charter relating to referendum and initiative powers of the people, has the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council. The Redistricting Commission must abide by San Diego City Charter, Article II, Section 5.1

THE POSITION

There is currently one vacancy for Chief of Staff. The position reports directly to the Redistricting Commission and will perform the following duties:

- (1) Assist the Redistricting Commissioners and provide technical and demographic assistance to analyze and formulate redistricting plans and maps.
- (2) Compile databases of election returns and demographic characteristics at the precinct/census tract level or other unit of analysis, as needed.
- (3) Compile expert reports, studies and court findings pertaining to redistricting.
- (4) Compile cases, statutes, resolutions, reports, learned treatises, etc. reflecting the existence of past and continuing discrimination in related to redistricting.
- (5) Produce informational/educational materials relevant to redistricting.
- (6) Work with the City Attorney's Office to obtain legal assistance where necessary to insure compliance with the Constitution, Voting Rights Act, Brown Act, and City of San Diego Charter.
- (7) Select, train and supervise subordinate staff.

NOTE: Length of employment is from February 2001 until the redistricting plan adopted by the Commission becomes effective and any and all legal and referendum challenges have been resolved.



DIVERSITY
BRINGS US ALL TOGETHER



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

Page 2 of 2

QUALIFICATIONS

The ideal candidate will have the following:

- Excellent verbal communication, writing and computer skills.
- Strong knowledge of the City's budget process.
- Strong management/supervisory skills.
- Ability to handle multiple assignments and work well under pressure.
- Be a self-starter with a high degree of initiative.
- Good judgement, a high degree of political acumen and effective interpersonal skills.
- Ability to deal with public officials, community leaders, the general public and others in a tactful manner.
- A working knowledge of the City of San Diego and it's diverse communities.
- A strong background in municipal government is highly desirable.
- Relevant experience, education and training which would provide the candidate with the knowledge, skills and abilities required to perform assigned duties.

COMPENSATION

- Salary to be negotiated and is contingent on qualifications.
- Generous benefits package available including various retirement savings, health insurance and life insurance options.

SELECTION PROCESS

Those interested in applying for the position should forward a letter of interest, current resume, three writing samples, and the names and telephone numbers of three professional references to: City Clerk's Office, Attn: Bonnie Stone, Elections Analyst, 202 C Street, San Diego, CA 92101 no later than 5:00p.m. on Monday January 15, 2001.

After a review of the submitted materials, a select number of candidates will be invited to participate in an interview.

The City of San Diego is an Equal Opportunity Employer.



DIVERSITY
BRINGS US ALL TOGETHER



**OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO**

MEMORANDUM

DATE : January 2, 2008

TO : Councilmember Toni Atkins
Members of the Budget Committee

FROM : Lisa Briggs, Policy Advisor
Office of the Mayor

SUBJECT: Balanced Budget Recommendation

On January 22, 2007, Mayor Jerry Sanders established the San Diego Charter Review Committee. This Committee was charged with conducting an in depth review of the City's Charter in order to make recommendations which would clarify the changes brought about by the "Strong Mayor" form of government as well as implement key financial reforms. The Committee created three subcommittees including the Subcommittee on Financial Reform.

The Subcommittee on Financial Reform was charged with determining what Charter modifications would be required to implement the Kroll recommendations. As the Subcommittee began meeting, the question of a Balanced Budget requirement within the Charter was raised by the Subcommittee. Over the course of August and September 2007, the Subcommittee and staff researched this issue and worked to craft language that would best meet the needs of the City of San Diego.

Attached is the Executive Summary of the Final Report of the San Diego Charter Review Committee which details the process and actions of this past summer. Also attached is Recommendation # 8 which is the language approved by both the Subcommittee on Financial Reform and the full Charter Review Committee which, if approved by the voters, would establish a balanced budget requirement within the Charter for the City of San Diego.

Attachments

SAN DIEGO CHARTER REVIEW COMMITTEE 2007



EXECUTIVE SUMMARY OF THE FINAL REPORT

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.

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 of the Final Report for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

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 of the Final Report for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

III, IV and V: OTHER MATTERS

The Committee also deliberated upon other matters, besides the 14 recommendations above. Specifically, the Committee examined the composition of the SDCERS Board of Administration, but did not think that it should be altered. Secondly, the Committee recommended Municipal Code language to the Mayor and Council, should the voters approve the Audit Committee and City Auditor-related Charter amendments offered in the Report. Finally, the Committee identified 11 other items upon which further study might be needed by a future Charter Commission or Committee. The SDCERS status quo recommendation, the Municipal Code language, and the "further study" items are the subjects of Sections III, IV and V of the Report.

VI. ASSEMBLY OF THE FINAL REPORT

On October 4, 2007, the Committee deliberated upon its Final Report, ultimately addressing nine separate motions. These motions established the priority to be accorded to its various recommendations, and provided for the editing to be done upon the document prior to submission to the Mayor and Council.

First Motion

Motion to classify recommendations on Interim Strong Mayor and Legislative Tightening as changes that are proposed for the 2008 ballot:

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.

The first motion was approved by Roll-call Vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sparrow; Negative = Gordon, Sorensen; Absent = Jones, McDade, Wilson.¹

Second Motion

Motion to classify recommendations on Financial Reform and the Kroll Report as changes that are proposed for the 2008 ballot:

I. CHANGES PROPOSED FOR THE 2008 BALLOT

¹ Committee members Donna Jones, J. Michael McDade and Lei-Chala Wilson were unable to attend the final meeting of the Committee. However, they approved the Final Report in draft form, and signed the signature sheet that it includes. The Committee did not make any substantive changes to the items upon which these three Committee members had voted in prior meetings, and the Final Report presented on October 4, 2007 had already been edited in accordance with their directions, based on the draft issued September 27, 2007.

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.

The second motion was unanimously approved by Roll-call vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Third Motion

Motion to move the SDCERS status quo recommendation, which the Report had originally placed among the Financial Reform and the Kroll Report category, to an alternate section of the report, including items to which the Committee recommends no changes:

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.

The third motion was approved unanimously by Voice-vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Fourth Motion

Motion to classify recommendations on Duties of Elected Officials as changes that are proposed for the 2008 ballot:

I. CHANGES PROPOSED FOR THE 2008 BALLOT

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.

The fourth motion was approved by Roll-call vote: Affirmative = Bersin, Channick, Davies, Milliken, Mudd, Nelson, Roth; Negative = Cleves Anderson, Gordon, Kwiatkowski, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Fifth Motion

Motion to re-classify the Salary Setting recommendation, so that it is listed among the recommendations on Duties of Elected Officials as changes that are proposed for the 2008 ballot; further to retain the "Later Ballot" classification proposed for the recommendations on Appointments to Outside Organizations, Personnel Director and Redevelopment Agency:

I. CHANGES PROPOSED FOR THE 2008 BALLOT

DUTIES OF ELECTED OFFICIALS

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.

The fifth motion was approved unanimously by Roll-call vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Sixth Motion

Motion to approve Municipal Code recommendations regarding the Audit Committee and City Auditor:

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.
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 sixth motion was unanimously approved by Voice-vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Seventh Motion

Motion to forward list of items for further study by a later Charter Committee or Commission (parking lot):

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

18. Appointment of City Attorney
19. Automatic Charter Review
20. Budgetary Authority
21. City Investment Policies
22. Filling Vacancies
23. Independent Budget Analyst's Status
24. Integration of Strong Mayor Concept into City Charter
25. Intergovernmental Relations
26. Mayor's Role in Closed Session
27. Possibility of Opting into CalPERS
28. Timing of Budget Process

The seventh motion was unanimously approved by Voice-vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Eighth Motion

This was a motion to alter recommendations in accordance with staff input. The staff noted that some of the recommendations would have been problematic, as the Committee had originally approved them. Such items as clearly retaining the CFO's civil service-exempt status, avoiding gender references in the City Treasurer language, specifying a manner by which the screening committee would recommend candidates for the Audit Committee, needed to be fixed. None of these changes substantively altered the original recommendations by the full Committee. The Committee voted to approve all of these changes, and they are reflected in the language of the recommendations listed above. The eighth motion was unanimously approved by Voice-vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

Ninth Motion

This was a motion to approve the report, with a request that the Chair edit it to reflect both fixes to any *typographical errors, as well as changes in the tone and diction of some sections* which members found problematic. The ninth motion was approved unanimously by Roll-call vote: Affirmative = Bersin, Channick, Cleves Anderson, Davies, Gordon, Kwiatkowski, Milliken, Mudd, Nelson, Roth, Sorensen, Sparrow; Absent = Jones, McDade, Wilson.

The Chair worked closely with staff to ensure that the Final Report accomplished all of the things that Committee members sought through the passage of the ninth motion. If there are any mistakes in the final document, these are not by design, but rather are the product of the human imperfection that has rendered every City Charter a work in progress.

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.

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF Jan 14, 2008 - Special meeting

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

The 2007 San Diego Charter Review Committee's Final Report Regarding the Audit Committee and Internal Auditor

☒ Reviewed ☐ Initiated By Audit On 1/07/08 Item No. 3

RECOMMENDATION TO:

Information only. No action taken.

VOTED YEA: N/A

VOTED NAY: N/A

NOT PRESENT: N/A

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Jay Poole's November 27, 2007, letter; Jay Poole's undated letter to Scott Peters and Charter Review Committee; Undated article "Who Should Serve on an Audit Committee?"; Willkie Farr's August 8, 2006, Report of the Audit Committee of the City of San Diego; Independent Budget Analyst's January 7, 2008, PowerPoint; Barbara Cleaves Anderson's January 7, 2008, letter; Independent Budget Analyst's January 7, 2008, Appt. of City Auditor Overview of Issues.

COUNCIL COMMITTEE CONSULTANT Jay ImPolans

**OFFICE OF INDEPENDENT BUDGET ANALYST
CITY OF SAN DIEGO
M E M O R A N D U M**

No. 08-1

DATE: January 2, 2008
TO: Honorable Members of the Audit Committee
FROM: Andrea Tevlin, Independent Budget Analyst *Andrea T.*
SUBJECT: Charter Revision Proposals

On Monday, January 7, 2008 the Audit Committee will consider revisions to the City Charter proposed by the Mayor's Charter Review Committee. The items for Audit Committee consideration are the proposals for an Audit Committee and a City Auditor.

The IBA has provided the attached reports for Audit Committee review. They include a comprehensive review of the significant research and analysis the IBA has performed on this topic over the last year and a half. The reports include our original review of the Kroll Report, published August 30, 2006 (see pp. 3-9), the IBA's May 17, 2007 report to the Charter Review Committee on Auditor Independence and Audit Committee Issues, and our recent report to the Rules Committee on the final recommendations of the Charter Review Committee (see p. 4).

As we have shown, there are several acceptable models for the City's Audit Organization. The model recommended by the Charter Review Committee is acceptable and is supported by the IBA. We reiterate that Mayoral appointment of the City Auditor is satisfactory in this model because it is paired with legislative appointment of the Audit Committee members and other safeguards for City Auditor independence, including reporting to the Audit Committee and City Council upon appointment. Mayoral appointment of the City Auditor would not be acceptable without these protections. Nor would Mayoral appointment of the citizen members of the Audit Committee provide for the necessary independence of the committee from management. The IBA continues to recommend no management oversight of the Audit Organization, which is a basic tenet of the best practices cited.

Attachments:

1. IBA Report 06-35: Responses to Remedial Recommendations of the City of San Diego's Audit Committee
2. IBA Report 07-55: Auditor Independence and Audit Committee Issues
3. IBA Report 07-102: Charter Review Committee Recommendations



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: August 30, 2006

IBA Report Number: 06-35

City Council Agenda Date: September 6, 2006

Item Number: 601

Item: Responses to Remedial Recommendations of the City of San Diego's Audit Committee

OVERVIEW

In February 2005, the City Council adopted a resolution to retain Kroll, Inc. ("Kroll") to evaluate the investigative reports of Vinson & Elkins and the City Attorney and to make appropriate recommendations to the City Council. At a meeting with SEC officials on March 2, 2005, the City was instructed to complete a thorough investigation into its own finances and develop a plan for remediation. In response to SEC concerns, the City formed an independent Audit Committee on March 8, 2005 consisting of Kroll representatives Arthur Levitt, Lynn Turner and Troy Dahlberg.

On August 8, 2006, the City's Audit Committee presented the Report of the Audit Committee of the City of San Diego that included investigation into the Retirement System and Sewer Rate Structure ("Kroll Report"). As was requested by SEC officials, the Kroll Report provided details of the Audit Committee's investigation and a comprehensive remediation plan to correct the City's internal controls and prevent future control lapses.

On August 24, 2006, the Mayor presented his response to the Kroll Report. The Mayor and his staff carefully reviewed the report, identifying 121 recommended remediations which they organized into 33 different categories. In his memorandum to the City Council dated August 24, 2006, the Mayor indicated that he had directed his staff to begin implementing all of the recommended remediations identified. The Mayor's implementation plan provides brief responses for the 121 identified remediation recommendations and associated fiscal impact estimates for the proposed actions discussed in each response.



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101
Tel (619) 236-6555 Fax (619) 236-6556

Attachment 1

The IBA has spent the preceding weeks reviewing the report and remediations, as well. In this report, the IBA presents a discussion on several remediations that we believe warrant critical examination prior to wholesale adoption. While the IBA is supportive of the Audit Committee's recommendations and the Mayor's timeline for implementation, we believe that true reform begins with an honest and open exchange of ideas. As the Audit Committee discussed at the August 8th presentation, the City's past practice of suppressing dissent and thoughtful discussion in the interest of expediency was an underlying cause of the challenges the City faces today. Given that admonition, the IBA believes it is critical to carefully consider these remediations in a public forum, discuss the merits of each, and explore possible alternatives. We also emphasize that adoption of the overall strategy should not preclude continuing public discussion and examination as plans evolve and details are developed.

The City must now consider a remediation package that will dramatically alter the way our government is structured. The reforms that are set into place will establish a foundation for the future operation of city government. In time, San Diego will become a blueprint for other municipalities facing the same challenges. The reforms that are considered today should be irrespective of any current elected official or personality; instead, they should focus on establishing a better process by which local government is run, today and in the future.

FISCAL/POLICY DISCUSSION

In general, the remediations proposed in the report represent improved practices in many areas of finance, accounting and management. The IBA has not found any of the remediations to be inappropriate or unnecessary; rather we encourage the adoption of all remediations proposed as part of a total strategy to achieve financial accountability and operational success. In addition, the IBA strongly endorses the Mayor's timeline for individual remediations as well as the broader goal to complete implementation within the next 30 months. This aggressive timeline makes this effort the top priority for the City of San Diego, which is entirely appropriate and necessary.

The IBA supports and is in agreement with the vast majority of the Mayor's plan for implementation of these remediations. With regard to Budget Policies and Financial Reporting, for instance, all of these recommendations are critical to enhance fiscal accountability, and many of the recommendations mirror those made by the IBA in several past reports and memos including our review of the FY 2007 Proposed Budget. Many other recommendations, such as Training, Reconciliation of Accounts, and Personnel, as examples, are clearly procedures and policies that should have always been in place in this organization. The IBA also supports the recommendations under City Funding/SDCERS, some of which are also reflective of past recommendations by this office.

Although the report made 121 recommendations, there is only one recommendation for which our research leads us to believe modifications are warranted. In addition, there are four subjects we will endeavor to clarify or supplement with additional detail or recommendations at this time. The five areas this report will address are:

1. Audit Organization
2. City Council Approval of Interdepartmental Transfers
3. City Council Review Period
4. Internal Hotline
5. Oversight Monitor

Audit Organization

Two of the most significant and fundamental remediations recommended by the Kroll Report are the establishment of an Audit Committee and the creation of the Auditor General position. As recommended in the report, the Audit Committee – which would be separate and distinct from the Kroll Audit Committee that conducted the investigation and produced these recommendations – would be made up of three members, including one Council member and two subject-matter experts appointed by the Mayor subject to Council confirmation. The Audit Committee will have oversight of all of the financial operations that are managed on a day to day basis by the Mayor. The Auditor General, who will be responsible for internal audits and will report to the Audit Committee, would also be appointed by the Mayor subject to Council confirmation.

Together, the two new entities will create an “audit organization,” which will effectively become a new arm to City government. The central role of this arm will be to provide independent oversight and auditing for the accounting and financial reporting functions of City management. While the IBA strongly supports the creation and role of this audit organization, we have concerns over the degree of independence that will be accorded this organization by virtue of the powers of appointment recommended by the Kroll Report.

Independence

Given that the audit organization’s independence will and should be its most distinguishing attribute, we believe it is critical to explore the concept of independence and how to best provide for it in the City’s audit organization. The United States Government Accountability Office (GAO) states that “the audit organization and the individual auditor, whether government or public, should be free both in fact and appearance from organizational impairments to independence.”¹ Further, the Institute of

¹ United States General Accountability Office, *GAO Government Auditing Standards Amendment No. 3, Independence* (Washington DC: United States General Accountability Office, 2002), §3.11.

Internal Auditors (IIA) defines independence as “[t]he freedom from conditions that threaten objectivity or the appearance of objectivity.”²

Thus, when establishing this audit organization the City of San Diego must ensure that the risk of undue influence, either real or perceived, that would impair objectivity and independence should be minimized or eliminated. The greatest risk of undue influence stems from City management, since all of the financial reporting functions and organizational controls, on which the audit organization is to perform its auditing functions, resides with management. Therefore, the key for the audit organization is not independence in the general sense, as in independence from all City officials and entities, but independence from management specifically. As a result, balancing the power of the various branches within the audit organization is not the desired outcome. Rather, the audit organization is itself a balance to the enormous power over financial reporting and internal controls that is rightly vested in management.

Audit Committee

The U.S. Securities and Exchange Commission (SEC) and the Government Finance Officers Association (GFOA) place particular emphasis on the separation of management from audit committee members.³ Also, both the GFOA and the Association of Local Government Auditors (ALGA) strongly recommend that management have no involvement in selecting audit committee members.⁴ Each vests the authority for

² Institute of Internal Auditors, *International Standards for Professional Practice of Internal Auditing* (Altamonte Springs: Institute of Internal Auditors, 2003), http://www.theiia.org/index.cfm?doc_id=2507.

³ “An effective audit committee may enhance the accountant’s independence by, among other things, providing a forum apart from management where the accountants may discuss their concerns.” U.S. Securities and Exchange Commission, *Strengthening the Commission’s Requirements Regarding Auditor Independence* (Washington DC: Securities and Exchange Commission, 2003), 17 CFR Parts 210, 240, 249 and 274, <http://www.sec.gov/rules/final/33-8183.htm>; “An audit committee provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns.” Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006).

⁴ “The governing body(4) of every state and local government should establish an audit committee or its equivalent...” (4) footnote: “For the purposes of this recommended practice, the term ‘governing body’ should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control, and auditing, provided they do *not* exercise managerial responsibility within the scope of the audit.”

Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006); “Audit committee members shall be appointed by the legislative body and all appointees shall be independent of the local government’s management and administrative service.” Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>.

establishment of the committee, as well as nomination and appointment of members, in the governing or legislative body of the organization. In a Strong Mayor form of government, the Mayor is a member of the management, and therefore it is not recommended that s/he participate in audit committee appointments.

Additionally, in reviewing other municipalities that use audit committees, the City of Denver is the only municipality that requires the executive to make appointments of private citizens to the committee. The City of Denver has found that this has not allowed for a sufficient level of independence from management. On August 28, 2006, the Denver City Council approved a measure for the ballot to revise the composition of the Audit Committee. This measure is intended to enhance independence by reducing management influence, in the form of appointments, on the Audit Committee.⁵ Finally, we refer to the private sector wherein appointments to an Audit Committee are typically made by the Board of Directors (governing body) rather than by the chief executive (management).

Regardless of the ample evidence to the contrary, some may argue that the current recommendation is sufficient to ensure independence in that a check and balance is provided through Council confirmation of the Mayoral appointees. In theory, the Council would have the ability to reject a Mayoral appointee who either did not meet the required qualifications or who was not deemed to be sufficiently independent from the City's management, in either fact or appearance. While this system does provide a check and balance to ensure some level of independence, it still presents certain challenges. First, the power of Council confirmation is less effective in reality than in theory. Council confirmation proceedings have in the past been little more than a formality, with little or no challenge to the appointee. Secondly, this process only gives the Council one choice: confirm or reject the Mayoral appointee. The selection process whereby candidates are vetted may not be apparent to the public. The public, and very likely the Council, may not know why or how the appointee was ultimately selected. If the appointee is rejected, the same selection process begins again and valuable time is lost.

The Mayor makes all of the financial appointments within the managerial structure, including the CFO, the Budget Director, the Comptroller, and the Treasurer. With 75%

⁵ During a phone conversation on August 15, 2006, the Director of Communications further elaborated that the mayoral appointment of four members, including the chair of the committee, to the six-member audit committee was "problematic." Denis Burckefeldt (Director of Communications, City and County of Denver, Auditor's office), in discussion with Lauren Beresford (Intern, City of San Diego, Office of the Independent Budget Analyst), 15 August 2006; During another phone conversation on August 29, 2006, the Director of Communications alerted the IBA that the Denver City Council had approved a ballot measure to reform the audit committee. Denis Burckefeldt (Director of Communications, City and County of Denver, Auditor's office), in discussion with Lauren Beresford (Intern, City of San Diego, Office of the Independent Budget Analyst), 29 August 2006.

of the appointments to the audit organization made by management as well (the two private citizens on the Audit Committee and the Auditor General), and insufficient checks available to non-managerial officials, the IBA concludes that this proposal does not provide the necessary independence from management to effectively serve the oversight function as envisioned. This proposal is inconsistent with the national guidelines and best practices established by reputable advisory organizations. The fact or appearance of compromised independence in the City's audit organization would eliminate the potential benefits of this body's oversight function. Therefore, the IBA recommends that the City of San Diego require the legislative body to make the two private citizen appointments to the Audit Committee, as endorsed by accepted practices and guidelines.

Drawing from procedures and practices employed in other organizations, the IBA suggests that the City Council appoint a screening committee to take recommendations and applications for the positions, review qualifications, and provide a pool of candidates to the City Council. The screening committee should be convened immediately and be charged to make their recommendations within 60 days of amending the ordinance for the Financial Reporting Oversight Board, consistent with the timeline as proposed in the Mayor's report. Please see Attachment 1 for a sample process to implement this recommendation.

The Kroll Report recommends that the third member of the Audit Committee be appointed from among the City Council Members. The Council Member should serve as a representative of the policy-making body, assisting the committee to identify long-term or pervasive issues within the organization that should be addressed. Additionally, as a layperson, the Council Member may serve to challenge the Audit Committee as a whole to understand the more basic underpinnings of financial and disclosure statements. The appointment of governing body members is recommended by the ALGA as well as the GFOA.⁶ Therefore, we support the Kroll Report recommendation that one Council Member be appointed to the Audit Committee.

We support the Kroll Report recommendation that the Audit Committee should establish a charter, and further recommend that this should include term limits and procedures for removal of committee members. This charter should be approved by the legislative body, the City Council, once drafted.

⁶ "The legislative body shall appoint at least one of its members to serve on the committee." Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>; "All members of the audit committee should be members of the governing body." Government Finance Officers Association, *Recommended Practice: Audit Committees (1997, 2002, and 2006)* (CAAFR) (Chicago: Government Finance Officers Association, 2006).

Auditor General

With regard to the Auditor General, best practices and guidelines suggest several mechanisms by which an auditor can gain independence. The GAO suggests that audit heads should be made free from organizational impairment primarily by being directly elected or appointed by the legislative body or a governing body. However, s/he also may be free from impairment if that person is appointed by another official, as long as the legislative body confirms the appointment, the appointee reports results and is accountable to the legislative body, and s/he subject to removal by the legislative body.⁷ This is supported by the ALGA, as well.⁸

As recommended by the Kroll Report, the City's Auditor General would be nominated by the Mayor and appointed by a majority vote of the City Council. A 10 year term and removal only by the legislative body or the Audit Committee enhances the Auditor General's independence from management. In addition, the Auditor General would submit reports to the City Council on his/her activities and findings. This model is consistent with best practices and national guidelines in ensuring independence for the Auditor General. In addition, it is not uncommon in the private sector for the executive to hire the internal auditor.

Notwithstanding this support for Kroll's proposal, it is valuable to take this opportunity to review the benefits and detriments of alternative proposals for establishing this position. One alternative is establishing an elected position for the Auditor General. In IBA Report 06-20, we explored this and several other mechanisms by which the City's Auditor and Comptroller could gain the requisite independence from management. It is likely that requiring the Auditor General to be elected would secure the greatest degree of independence. In this case, the establishment of an Audit Committee would probably be unnecessary, as the Auditor General would report directly to the voters of the City of San Diego. Many models for an elected auditor exist, although in most cases the position also has responsibility for treasury and management functions, which the Kroll Report seeks to separate from the internal audit function. The disadvantage to electing an Auditor General is that the position could become highly political. An elected Auditor General

⁷ "... A government audit organization may also be free from organizational impairments for external reporting if the audit organization's head meets any of the following criteria:... c. is appointed by someone other than a legislative body, so long as the appointment is confirmed by a legislative body and removal from the position is subject to oversight or approval by a legislative body, and reports the results of audits to and is accountable to a legislative body..." United States General Accountability Office, *GAO Government Auditing Standards Amendment No. 3, Independence*, (Washington DC: United States General Accountability Office, 2002), §3.30.2.

⁸ "Provide for an 'independent' auditor either through election or appointment by the legislative body or chief executive officer. Appointment or removal of an appointed auditor by a chief executive officer should be subject to legislative approval." Association of Local Government Auditors, *Guidelines and Model Legislation for Local Government Auditors* (Lexington: Association of Local Government Auditors, 1999), <http://www.nalga.org/reports/Legislation>.

would not only serve as an expert in auditing, but would also have to be a politician. As stated by the City of San Diego's current Auditor and Comptroller, this may increase "susceptibility to special interest groups and other politically powerful members within the entity."⁹ For this reason, the City's Auditor and Comptroller found election to be the least desirable method by which to gain independence from management. In addition, it is uncertain whether an elected auditor would possess the same high degree of experience and expertise as that of an appointed auditor, unless the City Charter provided for specific qualifications.

The election of an Auditor General would first require a Charter change, by the vote of the people at an election, and then a subsequent election to choose the Auditor General. This makes the timeframe for implementing an elected position several years out, at the very least. Given the support for the Kroll recommendation throughout the guidelines of reputable advisory groups and in practice nationwide, the IBA recommends that the City of San Diego move forward to establish an internal audit function with the greatest degree of independence possible within the structure of our current City Charter.

Another alternative is to have the Audit Committee appoint the Auditor General. This option was also discussed in IBA Report 06-20, wherein we suggested that the Financial Resources Oversight Board could serve as the appointing authority for this position. A variation on this model is seen in Seattle where the committee, comprised solely of Council Members, has this authority. This model is also seen in the City of San Diego for both the Personnel Director, who is appointed by the Civil Service Commission, and the *Executive Director of the Ethics Commission, who is appointed by the Ethics Commission*. Although this alternative is worthy of consideration and is illustrated by other systems that could serve as valuable models, best practices and guidelines more consistently support the appointment of the Auditor General directly by the executive, given sufficient checks for the legislative body.

In light of the research discussed above, the IBA supports the report's recommendation that the City of San Diego require the executive to appoint the Auditor General, subject to the confirmation of the legislative body, provided the IBA recommendation for the City Council appointment of Audit Committee members is implemented. Together, these proposals will provide for sufficient independence for the audit organization as a whole.

We furthermore emphasize that the power and responsibility of the City Council's confirmation is significant and should be used with great care and thoughtfulness. We recommend that confirmation hearings serve as a last stage in the interview process for the Auditor General. This public examination should include a process mirroring that used in the nomination phase by the Mayor, including prepared questions in order to

⁹ City of San Diego. *Annual Report on Internal Controls*. (San Diego: Office of the Auditor and Comptroller, 2006), 11.

assess the qualifications and skills of the candidate, and responses by the candidate in open session, prior to a vote.

Final Audit Organization Recommendation

The IBA's recommended model for the audit organization, wherein the Audit Committee is established by the legislative body and the Auditor General is nominated by the executive and appointed with consent of the legislative body, is most consistent with principles of independence and best practices across the nation. The IBA strongly recommends that the City Council adopt this model for the City's audit organization to ensure that, both in appearance and in fact, this organization will entirely fulfill the independent role envisioned.

City Council Approval of Interdepartmental Transfers

On July 31, 2006 the City Council approved an ordinance establishing a policy to reorganize the departments of the City, otherwise known as the Business Process Reengineering (BPR) Ordinance. This ordinance intended to strike a balance between the Mayor's desire to expeditiously implement BPR reforms, and the Council's Charter authority under Section 26 to "change, abolish, combine, and rearrange" the City departments.

The basic provisions of the BPR Ordinance state that prior to implementation of a proposed BPR, the Mayor will provide a report to the Council detailing any departmental or budgetary changes that would result from the BPR, including the reorganization of department, division or board, and any required changes to the Administrative Code or Appropriation Ordinance. The Council then has the discretion, within a specified review period, to hold a public hearing on the BPR and to make a determination to approve or reject the proposal. The review period has been established as five Council meetings or 60 days, whichever comes first. If no hearing is held or determination made within the review period, then the BPR proposal will be deemed approved.

The IBA has expressed concern on several occasions about the Council delegating its Charter authority to allow for BPR implementation. This concern was first noted at the Budget and Finance Committee meeting on June 14 and in Memo 06-10, where the IBA stated that the Council should retain its authority given its interest in the BPR process, and this being the first year under the new form of government. Subsequent IBA reports and memos echoed this sentiment, and issued new concerns over the length of the review period. While we continue to feel that the current process is not optimal with regard to the length of the review period, the remedial recommendations presented in the Kroll Report have brought new focus on the delegation of Council's Charter authority.

Recommendation 20 in Appendix M of the Kroll Report states the following:

Interdepartmental transfers to meet budgetary goals, or for any other purpose, should not be permitted unless approved in advance by the City Council.

While this statement is not addressed in the Mayor's response to the Kroll recommendations, we believe that it substantiates our concern with the BPR Ordinance. The Mayor's BPR process is likely to bring about fundamental reform to the way City departments are organized and operated, and the City Council should have a vested interest in engaging in this process. While the City Council has no authority over the operation or management of City departments, it does have the authority to determine how the City is organized, granted by Charter Section 26. By surrendering this authority, the Council is abrogating one of its sole sources of power.

To look at it from another perspective, it could also be argued that the BPR Ordinance as currently written erodes accountability. Under the current process, the Council is not required to affirmatively approve the reorganization of City departments, or the transfer of dollars, positions or appropriations between departments within the same fund. It is unclear the degree to which the Council can be held accountable if reforms are made without explicit approval. Without having to cast an affirmative vote, there is a greater chance that BPR proposals will not receive the highest level of scrutiny. Quite simply, a non-voting or *de facto* approval imparts less accountability than approval that is achieved by way of an affirmative vote.

Arguably, one of the most apparent conclusions of the Kroll Report is that the City Council has the obligation to fully understand what is being approved. Under the current BPR process, the Council has surrendered its approval without first knowing what is being proposed. Unless Council demands a hearing on each BPR, approval will be *de facto* and will not require a conscientious and affirmative vote. In light of the conclusions reached by the Kroll Report and the current atmosphere at City Hall, we feel that this process moves the City in the wrong direction. The IBA believes that it is not only appropriate but mandatory that the City Council become fully educated on, and cast an affirmative vote to approve or reject, each BPR proposal.

We recommend that the BPR Ordinance be amended to require that each BPR proposal involving changes to the budget, including the restructuring of City departments or the transfer of funds, positions or appropriations between departments, be docketed for Council consideration. To promote expediency yet still allow for docketing flexibility, all BPR proposals should be docketed as soon as possible, but no later than five Council meetings or 60 days from the time that BPR reports are released.

This proposed amendment would do nothing to slow down the implementation process (and in fact may actually speed it up since non-controversial BPRs could be placed on the consent agenda and would not necessarily have to wait for the full review period, as is the case under the current process), and would provide greater oversight and accountability.

for the City Council. We believe that this amended process is more in line with the reforms prescribed by the Kroll Report, and moves the City in the right direction by providing enhanced transparency and a higher degree of accountability.

City Council Review Period

The Kroll Report reminds us that the City Council is the governing body that authorizes the City to borrow funds. The investigation showed that the City Council's review of disclosure documents has at times been rushed and perfunctory. Citing the critical importance of the City Council's oversight role, Kroll recommends that the City Council be provided at least two weeks to review substantially completed drafts of a preliminary offering statement before it is asked to vote to approve the final document. The Kroll Report states "if the City Council is to share responsibility for the accuracy of the City's disclosure documents, it is absolutely essential that the Council be given a reasonable opportunity to examine and ask questions about the disclosure documents it is authorizing to be disseminated to the public".

The IBA strongly supports Kroll's recommendation for a 14-day review period for offering statements and the City's CAFR. Acknowledging Kroll's comment that effective oversight cannot be performed without sufficient time for document review, the IBA would further recommend that a 14-day review period be considered for all items scheduled to be heard by the City Council. IBA Report 06-5, issued on January 30, 2006, established policies and procedures for a two week document review period tied to the current requirements established by the City Council docket coordinator. However, current docketing practices regarding the release of information by the City Clerk only provide Council members and their staff with 1 to 3 business days to review items that require City Council action.

It has been our observation that the inevitable pressure to expedite items to the City Council often forces current docketing requirements to be relaxed which in turn compromises an already short review time for elected officials. It should be noted that management and City Attorney review time prior to docketing typically requires three to six weeks. The IBA believes that elected officials require more than 1 to 3 business days to effectively review complex documents and fulfill their oversight responsibility. When the time available does not allow for the normal review process, the period for City Council review should be the last place to cut corners. In light of Kroll's comments and in accordance with the procedural requests made in IBA Report 06-5, we recommend that the Mayor's Office, Council President's Office, City Clerk, and City Attorney work together to develop a plan that would increase the length of the City Council review period for all legislation. We recommend that the procedure be reviewed in six months, and if it hasn't been successful, City Council should consider legislation that would legally require a longer review period.

Internal Hotline

The IBA agrees with the recommendation regarding the establishment of an internal hotline and effective procedures and policies for dealing with whistleblower complaints. We support the Mayor's proposal to establish these policies and procedures by October 2006. The IBA strongly recommends that those procedures should include the Auditor General as a member of the Hotline Committee and that s/he be a designated recipient of a copy of each and every complaint. This would ensure that there is no opportunity for management to prevent proper investigation of any complaint. Therefore, the Auditor-General should be a part of the decision-making process for which complaints are referred to the audit organization and that decision should not be made by management alone.

Oversight Monitor

In assessing the City's ability to implement a remediation plan, the Kroll Report recounts a history of repeated government failures and expresses a lack of confidence that the City can independently follow through with their Remediation Plan. The Kroll Report recommends the appointment of a Monitor to oversee the implementation of and compliance with the remediation plan. It is further recommended that a City Monitor be selected by the Mayor in consultation with the City Council and subject to the approval of the SEC. The Kroll Report provides the following prescription for a City Monitor:

- An independent person of suitable standing, independence and experience
- Complete and unfettered access to all City/SDCERS personnel and records
- Make quarterly reports to the City and the SEC on the City's progress
- Serve a term of no less than three years and be provided with adequate resources
- Provide the SEC with the right, upon request, to expand the scope of the Monitor's duties following consultation with the City.

The Mayor has expressed support for these recommendations and indicated that he is in the process of identifying a Monitor to oversee implementation of the Remediation Plan. In his August 24th memorandum, the Mayor states that the specific scope and duties will be worked out once a City Monitor has been identified. Citing similar unspecified situations in the private sector, the Mayor estimates the cost to be \$3 to \$4 million over the three year period.

Given the considerable estimated expense for a monitor to oversee the City in complying with the SEC and implementing a well defined remediation plan, the IBA recommends that there be more discussion about the specific scope of work and associated costs as soon as possible, and prior to selecting a Monitor. This will enhance the City Council and the public's understanding of the work of an Oversight Monitor and justify the estimated cost associated with it.

Once a comprehensive scope of work for the Monitor has been developed, staff should ensure that a provider is selected in conformance with Charter and Municipal Code requirements for competitive bidding and contracting for services. The contract for a City Monitor should be discussed at a meeting of the City Council or Rules Committee prior to approval. The IBA believes that these recommendations can be expeditiously completed to the satisfaction of the SEC, elected officials and the public.

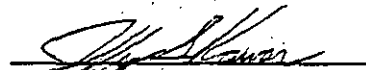
CONCLUSION

The IBA strongly supports the implementation of the suggested remediations in the Audit Committee report as necessary steps to achieve financial accountability and operational success. The Mayor's proposal for implementation is sound and the IBA endorses the aggressive timeline as established by the Mayor. The IBA recommends adoption of that plan, with the modifications described:

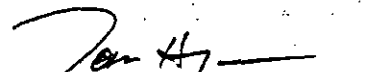
1. **Audit organization:** Adopt the Kroll Report's recommendation for the appointment of the Auditor General, but require the legislative body to make the two citizen appointments to the Audit Committee.
2. **City Council Approval of Interdepartmental Transfers:** Amend the BPR Ordinance to require an affirmative action by the City Council on each proposal that includes any departmental or budgetary changes.
3. **City Council Review Period:** Direct the Mayor's Office, Council President's Office, City Clerk, and City Attorney work together to develop a plan that would increase the length of the City Council review period for all legislation and review effectiveness in six months.
4. **Internal Hotline:** Require the Auditor General to sit on the Hotline Committee and be a designated recipients of each complaint submitted in order to ensure all complaints are investigated properly.
5. **Oversight Monitor:** Have a public discussion on the necessity, scope of work and funding requirements in order to enhance public and City official's understanding of this function.



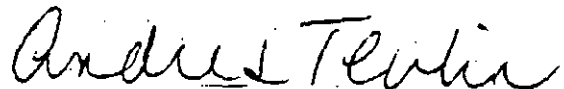
Penni Takade
Legislative & Policy Analyst



Jeri Kavar
Fiscal & Policy Analyst



Tom Haynes
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

RECEIVED
CITY CLERK
SAN DIEGO, CA
JUN 10 1980

Attachment 1

Sample Audit Committee Appointment Process

Week 1:

Utilizing the Kroll Report and the cited GFOA Recommended Practice, **develop an expanded description of the role of an Audit Committee member** to include: ideal candidate qualifications and experience, expected scope of responsibilities, term of appointment, anticipated frequency of meetings, direct report and public reporting requirements and resources available to the Committee.

Weeks 2 through 5:

- 1) **Solicit applications from qualified candidates** utilizing recommendations from independent individuals, organizations and government oversight entities with affiliations with experts in the realm of government financial reporting and auditing. Notices to the public to apply for the appointments could also be made utilizing local publications, asking that the publications donate this space as a public service. The City should not accept applications from individuals who have made campaign contributions to, publicly supported or opposed, or had other campaign involvement with any of the City's elected officials. Consistent with the recommendations in the Kroll Report for SDCERS Board Members, candidates should be required to complete a detailed application and to affirm the accuracy of all the data therein, and also be subject to a background check.
- 2) **Establish a screening committee to review and select the best qualified candidates for consideration.** For example, a six-member screening committee might be logically comprised of two City Council Members, the City Attorney, CFO, IBA and an outside financial expert selected by the City Council.

Weeks 6 and 7:

The screening committee meets to review applications and select a small pool of candidates judged to be best qualified for the two available appointments.

Week 8:

The City Council convenes a special public meeting to receive personal statements of interest and ask questions of the top candidates.

Week 9:

The City Council votes to appoint two citizens to the Audit Committee.



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: May 17, 2007

IBA Report Number: 07-55

To: Charter Review Committee Members

From: Andrea Tevlin, Independent Budget Analyst

Subject: Auditor Independence and Audit Committee Issues

OVERVIEW

On November 2, 2004, the voters of the City of San Diego passed Proposition F, which amended the City Charter to add Article XV to "test implementation of a new form of governance commonly known as a Strong Mayor form of government". In considering Charter Sections 39 and 265 as they relate to the City Auditor & Comptroller, the City Attorney opined in a memorandum dated January 23, 2006 (attached) that the Office of the City Auditor and Comptroller is now under the Mayor's direct supervision; however, the "Mayor may not limit or impede the authority or duties given to, or required of, this public office by City Charter or ordinance, federal or state law." Given concerns about auditor independence and the oversight role of the City's new Audit Committee, the IBA has prepared a binder of Auditor and Audit Committee documents for the Charter Review Committee. Drawing from the contents of the binder, this report attempts to highlight some of major issues related to auditor independence and the City's Audit Committee to better facilitate Charter Review Committee discussion prior to a public vote to possibly amend the City Charter.

FISCAL/POLICY DISCUSSION

Auditor Independence

The IBA has issued several reports expressing our concern about the City's lack of auditor independence under the new form of government. As stated in IBA Report Number 06-35, we believe that an audit organization's independence will and should be its most distinguishing attribute. In an effort to initiate Charter Review Committee discussion related to auditor independence, the IBA has extracted the following bullet points for your consideration:

- The United States Government Accountability Office (GAO) defines *independence*, in their Generally Accepted Government Audit Standards (GAGAS), as independence from management. In the City's new form of government, the Mayor controls organizational management.

Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556

Attachment 2



- The GAO further states that “the audit organization and the individual auditor, whether government or public, should be free both in fact and appearance from organizational impairments to independence.”
- The IBA believes that the greatest risk of impairment or undue influence to City’s audit organization is the current structure whereby the auditor reports to management whose activities he is charged with auditing.
- In their recommendation for an independent Auditor General (now referred to as an internal auditor), Kroll makes the following statement: “Currently, the functions of accounting and financial reporting are combined with the function of internal auditing in the Office of the City Auditor and Comptroller; in substance, the auditor audits his own work. Such a structure lacks the requisite level of independence widely viewed as essential for a sound financial reporting system.”
- The City’s first Annual Report on Internal Controls, prepared by the former City Auditor and Comptroller and dated January 1, 2006, provided the following about auditor independence: “An auditor’s ‘stock-in-trade’ is her or his opinion. The value of the auditor’s opinion is rooted in the auditor’s *objectivity*. The auditor’s objectivity is rooted in the auditor’s *independence* within the organization. To the extent that an auditor’s opinion is less than objective, the value (and reliability) of that opinion is diminished.”
- The California legislature has codified the necessity for audit independence with Section 1236 of the California Government Code that requires all city and county audit activities and auditors follow the Institute of Internal Auditors (IIA) Professional Practice Standards. The IIA’s Statement of Responsibilities speaks to auditor independence as “essential to the effectiveness of internal auditing.”
- The IIA’s Statement of Responsibilities further specifies that “objectivity is essential to the audit function. Therefore, an internal auditor should not develop and install procedures, prepare records, or engage in any other activity which he would normally review and appraise and which could reasonably be construed to compromise his independence.”
- In a private sector parallel, the Sarbanes-Oxley Act of 2002 addresses auditor independence by adding a “Prohibited Activities” section to the Securities Exchange Act of 1934 that makes it unlawful for an auditing firm providing an audit for a client to contemporaneously provide any non-audit service (i.e., bookkeeping or other services related to the accounting records or financial statements of the audit client) for that same client.

Audit Committee Issues

In the Report of the Audit Committee of the City of San Diego dated August 8, 2006 ("Kroll"), there was a financial remediation recommendation to establish a three-member Audit Committee, with two members from the public and one member from the City Council. Kroll further suggested that the two public members be appointed by the Mayor and confirmed by the City Council. Citing professional best practices in IBA Report Number 06-35, the IBA recommended that the City Council appoint the two public members. After considerable discussion about the appropriate process and composition of the recommended committee, the City Council acted to establish an Audit Committee with the adoption of Resolution R-302279 on January 9, 2007. The City's Audit Committee is comprised of three members of the City Council.

The City Council adopted Ordinance O-19612 on April 24, 2007 to codify the Audit Committee Charter into the City's Municipal Code. The Municipal Code now specifies that the Audit Committee shall provide independent, legislative oversight for the audit work performed by and for the City. The Audit Committee Charter and the City's Municipal Code state that this oversight "shall extend to the City's internal controls over financial reporting; the City's financial disclosures; internal financial audits; and the selection, with appropriate consultation with the Mayor, and monitoring of independent audit firms."

The following bullet points provide information contained within the binder related to some of the issues faced in establishing and defining the role of the City's Audit Committee:

- In their Recommended Practice for 2006, the Government Finance Officers Association (GFOA) states "An audit committee also provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, an audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices, and that the independent auditors, through their own review, objectively assess the government's financial reporting practices."
- With respect to audit committee establishment, the GFOA further provides "The governing body (4) of every state and local government should establish an audit committee or its equivalent ..." (4) footnote: "For the purposes of this recommended practice, the term 'governing body' should be understood to include any other elected officials (e.g., county auditor, city controller) with legal responsibility for overseeing financial reporting, internal control and auditing, provided they do not exercise managerial responsibilities within the scope of the audit."
- The Association of Local Government Auditors (ALGA) has developed model code or ordinance language for establishing a local government auditor and/or audit committee.


That language specifies that "Audit committee members shall be appointed by the legislative body and all appointees shall be independent of the local government's management and administrative service."

- The American Institute of Certified Public Accountants (AICPA) states "The creation of an effective audit committee function can help a government establish accountability because it can focus specifically on issues related to fiscal accountability. Furthermore, a government audit committee can devote more time to fiscal accountability matters, resulting in greater benefits. For example, government audit committees can improve financial practices and reporting, enhance the internal audit function and enhance the external audit function."
- The National Office of Audit and Accounting (NOAA) issued an Audit Committee Guide for Public Sector Entities which contrasts the role of management with that of the audit committee as follows: "Management has the responsibility to ensure the accuracy of the financial statements and compliance with laws, regulations and agreements. It is the audit committee's function to carry out due diligence by evaluating information from the chief financial officer, program administrator, the internal auditor, and the external auditors to form conclusions."

CONCLUSION

The information provided within this binder is provided as a resource for members of the Charter Review Committee to utilize in discussing the City Charter as it relates to the issue of auditor independence, which is linked to the new role of the City's Audit Committee. The binder is largely comprised of best practices and recommendations from professional auditing, accounting and government associations. In an effort to provide additional perspective, we have included related IBA reports and selected pages from the Kroll consultant report to the City.

The IBA is pleased to be an ex-officio member of the Charter Review Committee. We are interested in the work of the Committee and would be glad to provide you with additional information to support your review. My staff and I stand prepared to assist the Committee, and its Subcommittees, as may be needed. Please feel free to discuss anything of interest with me or a member of my staff in the course of your review.



Andrea Tevlin
Independent Budget Analyst

CITY OF SAN DIEGO

TELEPHONE (619) 236-6220

FAX (619) 236-7215

Michael J. Aguirre

CITY ATTORNEY

MEMORANDUM OF LAW

DATE: January 23, 2006

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: The Relationship Between the City Offices of the Mayor and the Auditor and Comptroller under the Mayor-Council Form of Government

QUESTION PRESENTED

What is the relationship between the Office of Auditor and Comptroller [Auditor] of the City of San Diego and the Office of the Mayor under the new Mayor-Council form of government?

SHORT ANSWER

Under the Mayor-Council form of government implemented January 1, 2006, the Mayor has the express authority to appoint and dismiss the Auditor. That places the office under the Mayor's supervision. However, the Mayor may not limit or impede the authority or duties given to, or required of, this public office by City Charter or ordinance, federal or state law.

BACKGROUND

On November 2, 2004, the voters of the City of San Diego passed Proposition F, which amended the San Diego City Charter to add Article XV to "test implementation of a new form of governance commonly known as a Strong Mayor form of government." Charter section 250. The five-year trial period of governance is operative January 1, 2006 and continues until December 1, 2010, unless the electorate extends this form of government. Charter § 255. Voters were urged "to elect a chief executive who is accountable for how the City is run, . . . who had the authority to make changes." San Diego Ballot Pamphlet, General Elec. Nov. 2, 2004, argument in favor of Prop. F.

Voters were told that "the Mayor would have the authority to give direction to all City officers and employees, except those in departments and offices recognized in the Charter as being independent . . . The Mayor would be responsible for preparing the annual budget for the

Council's consideration and adoption. . . .The Mayor would appoint the City Manager with Council confirmation. The City Manager would serve at the pleasure of the Mayor. The Mayor would appoint the City Auditor and Comptroller, Police Chief, and Fire Chief, subject to Council confirmation. All other managerial department heads formerly under the City Manager would be appointed by the Mayor and serve at the pleasure of the Mayor." San Diego Ballot Pamp. General Elec. Nov. 2, 2004, the City Attorney's Impartial Analysis of Prop. F.

Part of the system of "checks and balances" created by Proposition F was the new office of Independent Budget Analyst. San Diego Ballot Pamp. General Elec. Nov. 2, 2004, argument in favor of Prop. F. The City Council would appoint the Independent Budget Analyst: "to review and provide budget information to the Council independent from the Mayor." San Diego Ballot Pamp. General Elec. Nov. 2, 2004, the City Attorney's Impartial Analysis of Prop. F.

Charter section XV was effective January 1, 2006, and with its implementation and the election of a new Mayor, questions have arisen about the relationship between the Office of the Mayor and the Office of the Auditor in the new form of governance.

DISCUSSION

I. Charter Changes Impacting the Auditor.

Effective January 1, 2006, the Mayor assumed all executive authority, power, and responsibilities conferred by the Charter upon the City Manager in Article V [Executive and Administrative Service], Article VII [Finance], and Article IX [Retirement of Employees]. Charter § 260 (b). In addition, the Mayor became the Chief Executive Officer of the City of San Diego.¹ Charter § 265 (b) (1).

A. The Mayor's Financial Duties.

The Mayor now serves as Chief Administrative and Chief Budget Officer of the City, assuming the duties and responsibilities of the previous City Manager. As such, the Mayor assumed the duties outlined in Charter section 28:

... to supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter; to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; to keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as

¹ The Charter does not define "chief executive officer." But the title commonly means "The highest-ranking executive in a company or organization, responsible for carrying out the policies of the board of directors on a day-to-day basis." The American Heritage Dictionary of the English Language: Fourth Edition (2000). (<http://www.bartleby.com/61/90/C0289050.html>)

may be required by that body, including an annual report of all the Departments of the City . . . as Chief Budget Officer of the City, [the Mayor] shall be responsible for planning the activities of the City government and for adjusting such activities to the finances available. To this end he shall *prepare annually a complete financial plan* for the ensuing year and shall be responsible for the administration of such a plan when adopted by the Council. He shall be charged with the *bringing together of estimates covering the financial needs of the City*, with the checking of these estimates against the information relative to past expenditures and income, with *the preparation of the budget document and supporting schedules and with the presentation of the budget to the Council.* (Emphasis added).

In addition, the Mayor is to cooperate fully with the Council and the Office of Independent Budget Analyst, including supplying requesting information concerning the budget process and fiscal condition of the city to the Council and the public. Charter § 265 (b)(14) (15).

B. Mayor's Supervision of Officers Responsible for Financial Matters.

With the broad administrative and fiscal responsibilities came the Mayor's authority to appoint and dismiss the City officers responsible for City financial matters. He may appoint and dismiss the City Treasurer as could the previous City Manager. Charter §§ 260 (b), 29, and 45. The amendments to the Charter made no changes in the duties and responsibilities of the office of the Treasurer, which include maintaining custody of and disbursing City moneys, and recording all receipts and expenditures. Charter § 45. Similarly, the Charter transferred the authority to appoint the Auditor from the City Council to the Mayor, subject to Council confirmation, and provides that the Mayor may remove the Auditor subject to appeal to the City Council. Charter §§ 265 (b)(10) and (11). However, the Charter made no changes to the duties of the Auditor. The Auditor remains the "chief fiscal officer of the City" according to Charter section 39, with all of the previously-existing duties and powers.

In assuming the responsibility for the proper administration of all affairs of the City, Charter section 29 gives the Mayor the power to appoint and remove:

. . . all officers and employees in the administrative service of the City under his control; but the [Mayor] may authorize the head of a Department or officer responsible to him to appoint and remove subordinates in such Department or office. Appointments made by, or under the authority of, the [Mayor], shall be on the basis of administrative ability and of the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days. . . Charter § 29.

Under the new form of government, the Office of Auditor and Comptroller was expressly transferred to the new executive branch of City government and the officer holding the position

of Auditor now reports to the highest ranking officer within that branch, the Mayor. However, the Auditor's independent duties, and powers under the City Charter and San Diego Municipal Code have not changed. To help ensure the Auditor's independence, the Charter provides a "checks and balances" by allowing the Auditor to appeal his removal to the City Council. Charter § 265 (b) (11). Nonetheless, the Mayor's responsibilities with respect to the City's finances and budget require that he exercise supervisory authority over the Auditor, subject to other laws that require the Auditor's independence when performing his or her duties.

II. The Auditor's Authority and Responsibilities Remain Unchanged.

The Office of Auditor is created by the City Charter and the Charter provides the City Council with only limited authority to transfer to others those matters the office might handle that "do not relate directly to the finances of the City." Charter § 39. Accordingly, the Department may not be changed, abolished, combined or rearranged except by a charter change. Similarly, no other Department may be created that would duplicate the duties the charter places upon the Auditor that do relate directly to the finances of the City. See, Charter § 26; *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 387-388 (1976).

In addition, the Mayor would exceed his authority should he impede the performance of the mandatory duties and responsibilities placed upon the Auditor as a public officer by the City Charter, ordinance, or state or federal law. See, *Lockey v. City and County of San Francisco*, 33 Cal.4th 1055, 1079-1080 (2004). A Mayor in the new form of government only has the authority that is expressly or impliedly conferred upon him or her by a charter. 3 McQuillin, Mun. Corp. (3rd Ed, 2001) § 12.43, p. 266; see, *Bartlett v. Bell*, 58 Cal. App. 357 (1922) [Mayor has no power to compel Auditor to act in matter to benefit a third party].

The duties required of and the power provided to the City Auditor by the City Charter remain intact through the governance change. Charter section 39 specifies the duties of the Auditor and provides, in relevant part, that:

... The City Auditor and Comptroller shall be the chief fiscal officer of the City. He 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 and approved by the City Manager and the Council. He 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,² 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 shall certify in writing that there has been

² Charter section 89 also requires the Auditor submit similar monthly statements to the Council.

made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof.³ He shall *perform the duties imposed upon City Auditors and Comptrollers by the laws of the State of California, and such other duties as may be imposed upon him by ordinances of the Council*, but nothing shall prevent the Council from transferring to other officers matters in charge of the City Auditor and Comptroller which do not relate directly to the finances of the City. He 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 shall appoint his subordinates subject to the Civil Service provisions of this Charter. (*Emphasis added*).

Other Charter-mandated duties include the joint determination with the City Attorney of the proper form, arrangement, and itemization of the annual appropriation ordinance; and determination of the "percentage change in price index" (Charter § 71); the keeping of accounts for each item of appropriation; and the transfer of unexpended funds from these accounts to the general fund upon completion of the project or at the end of one year. Charter § 72. If the Council fails to include adequate funds in the appropriation ordinance to cover the Mayor's estimate of the City's debt, or the amount actually required to cover the debt, the Charter requires the Auditor to set up an account for the full amount the Mayor estimates or the amount required to cover the debt, and to transfer tax revenue into that account. Charter § 74. The Auditor has the responsibility to examine all payrolls, bills and other claims against the city (except claims for damages) and has the discretionary authority to investigate such claims (Charter § 82); he is responsible for issuing the checks to pay claims against the City that have been approved by the heads of the Department or offices incurring the debt (Charter § 83); he receives reports from all City officials who collect and deposit money for fees, permits, licenses, inspections, services, taxes, and other municipal charges (Charter §§ 86 and 88); and he determines the appropriate form of accounts to be used by all officers and Departments of the city that receive or disburse City moneys (Charter § 87).

The Auditor must include in his records the cost or value of all City assets; present a balance sheet containing that information to the Mayor-Manager; and publish that information in his annual report. Charter § 112; SDMC § 22.0708. He must audit the accounts of any officer who dies, resigns or is removed from office, and report the results to the Mayor-Manager and Council. If the person is found indebted to the City, the Auditor must notify the Mayor and Council. Charter § 111. And the Auditor has authority to refuse to issue a warrant for a retirement allowance, if, in the Auditor's opinion, the allowance has been granted in contravention of Charter Article IX or ordinances passed under its authority. Charter § 144.

³ Charter section 80 also requires the Auditor first certify there are adequate unencumbered funds in the Treasury to cover any contract, agreement, or obligation involving the expenditure of funds before the Council makes such contracts or orders.

The Auditor has additional responsibilities and powers codified in section 7, Article 2 of the San Diego Municipal Code. For example, the Auditor:

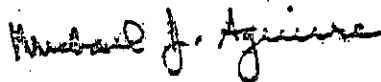
... shall, at any time, have power to examine, check and audit the accounts and records of any commission, board, department, division, office, or employee of the City; to require an accounting for all cash revenues of the City; to make and certify to an actual count of cash and securities, and to prescribe, govern and control the movements, or transfer of all cash revenues, or securities, to the custody of the City Treasurer." SDMC §22.0701.

The Mayor and the Auditor must jointly prepare and submit an annual report to the City Council and the Financial Reporting Oversight Board on the status of the City's internal financial controls, with the necessary joint certifications. SDMC § 22.0708. The Auditor also has separate duties associated with the City's Comprehensive Annual Financial Report (CAFR). SDMC §§ 22.0709, 22.0710. Accordingly, the Auditor has many responsibilities and duties outlined in the Charter, City ordinances, and state laws in addition to the reporting obligations to the Mayor and City Council.

CONCLUSION

Under the new Mayor-Council form of governance, the Auditor reports to the Mayor as Chief Executive Officer of the City of San Diego. Under the Charter, the Auditor is required to support the Mayor in his obligation to provide a budget to the City Council and to provide such other information related to the City's finances and the administration of the City. However, the Auditor does retain some independence in that the Mayor may not limit or impede the authority or duties given to or required of this public officer by Charter, ordinance, federal or state law. Finally, the Auditor's right to appeal his removal to the City Council provides a check and balance on any improper interference with the Auditor's duties and responsibilities.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

JK:CMB:jk
ML-2006-2



**THE CITY OF SAN DIEGO
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

Date Issued: October 18, 2007

IBA Report Number: 07-102

Rules Committee Agenda Date: October 24, 2007

Item Number: 1

Subject: Charter Review Committee Recommendations

OVERVIEW

As detailed in the Final Report of the 2007 San Diego Charter Review Committee, the group was created by the Mayor and charged with specific tasks related to Charter review approximately six months ago. One or more representatives of the Office of the IBA attended each meeting of the Charter Review Committee and its subcommittees in order to provide research and information, give input on behalf of our office, and observe the process and dialogue in order to inform the comments we would make to the City Council.

In this report, we will only discuss items recommended in the Charter Review Committee's Final Report for which the IBA has taken a position and/or wishes to make additional information available. The following are the Committee's recommendation areas which will be discussed in this report:

- -Sunset Revision-
- Eleven-Member City Council
- Veto Override
- Independent Budget Analyst
- Chief Financial Officer
- Audit Committee and City Auditor
- Balanced Budget

In addition, the IBA will make another suggestion, on the matter of Mayoral appointment of a City Manager/Chief Operating Officer, in this report.



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101
Tel (619) 236-6555 Fax (619) 236-6556

Attachment 3

FISCAL/POLICY DISCUSSION

Sunset Revision

The Charter Review Committee has recommended that the trial period for the Strong Mayor form of government be extended by four years and that it shall be made permanent unless other action is taken. The IBA wishes to point out that, although the committee has characterized this as an extended trial period, it is actually being made permanent through this proposal. Generally in a trial, a decision on the question is required at the end of the trial period. This provision does not require the question to be called at the end of the trial, which effectively means it is permanent if passed by the voters next year. The recommendation does allow that the voters may act to alter or terminate this at any time, however this is a right of the citizens regardless of the permanent or temporary nature of any provision in the Charter.

The IBA suggests it would be more candid to let the public know that this is effectively making the Strong Mayor form permanent, if this recommendation is approved. Alternately, if a trial period is still desired, a provision for automatic placement on a prior ballot should be included. The ballot should be provided for sufficiently in advance to ensure that the result may be certified by the Secretary of State prior to the actual expiration of the trial period.

Eleven-Member City Council

The IBA takes no position on the recommendation to expand the City Council. However, as readers will note, the recommendation is not specific as to when the expansion should take place. During discussion, some members of the subcommittee and committee expressed concerns about the cost of redistricting in the near future (among other concerns) when the decennial redistricting as required by the Charter would follow soon after. However, some members supported an immediate redistricting process notwithstanding the added cost and effort. Therefore, the committee ultimately decided to let the City Council choose the most appropriate time to perform the redistricting necessary for expansion.

The IBA has recently attempted to quantify the actual cost of a redistricting effort. Based on the 2002 Annual Budget, the City budgeted almost \$162,000 for the 2000 Redistricting Commission (RC), which comprised two part-time staff at approximately \$72,000 and non-personnel expense. In addition, the IBA is aware that the RC utilized the services of a Senior Planner and that the City Clerk provided Records to take minutes. These costs are not captured in the allocation above and there may be further staff or material support that the IBA has been unable to identify. The IBA believes this information can be valuable in considering the timeframe for redistricting to expand the Council, should this recommendation be forwarded. However, we would note that these are budgeted, not actual costs. The IBA was unable to find records for the actual costs associated with the 2000 RC.

In addition, the 2000 RC made a recommendation for future RC's budget requirements in their final report in 2001. The 2000 RC suggested the budget should include funding for three full-time staff, consultants, legal counsel, and various supplies and equipment. This closely mirrors a proposal made by the 2000 RC in December 2000 (Attachment I). The 12 month budget proposed \$750,000 for five staff, consultants and related costs. The IBA estimates that a proposal for just three staff could be reduced significantly. However, considering the increase in cost for salaries and materials since 2000, we suggest that the cost of supporting an RC effort, as envisioned by the 2000 RC, could still be between \$650,000 - \$700,000.

The operating costs for the additional districts may be as much as \$3 million annually, if current district budgets are retained. As discussed by the committee, the cost of this proposal is a trade-off for the additional representation citizens would enjoy.

Veto Override

During the discussion of increasing the threshold for overriding the Mayor's veto, the committee considered linking the issue to the expansion of the City Council. This proposal ultimately failed to garner a majority of votes amongst the subcommittee or committee. However, the IBA believes that further discussion of this issue may be warranted, both due to the split vote at the committee and due to the unique situation it would create for veto override. As described in the report, implementing the two-thirds veto override for an eight-member City Council would in reality require a three-quarters override. While two-thirds results in percentages greater than 66.7% in some cities, as the report references, a 75% requirement would be a uniquely high hurdle for regular resolutions and ordinances. Furthermore, for special ordinances that currently require six votes to pass, the override could only be accomplished with seven of eight votes or 85.7%.

The IBA suggests that, if the override and 11 member Council recommendations are approved, the Council may wish to consider hastening the expansion of the Council and linking it to the new override implementation. The expansion of the Council may be accomplished through the redistricting process, as described. Alternately the appointment of a temporary at-large member may be considered until a full redistricting can be completed and new Council Member(s) elected.

Independent Budget Analyst

The IBA supports the language recommended by the Charter Review Committee with respect to this office. The substantive addition recommended clarifies within the Charter that the work of the IBA may include both budgetary and policy analysis, as currently provided by the Municipal Code. We believe that this language clarifies the nature of the independent work performed by the IBA while maintaining the City Council's authority to set powers and duties of the office in the Municipal Code.

The committee also gave some consideration to changing the name of the IBA to incorporate the legislative analysis role of the office, and making the office permanent regardless of the form of government the City may have. Ultimately, the committee has placed it in the category for further study. The IBA would support the permanence of this office if studied in the future, or if taken under consideration for this ballot, recognizing its value in either form of government.

Chief Financial Officer (CFO)

The IBA supports the recommendation of the Charter Review Committee to place the CFO in the Charter and to assign all comptroller duties to this position as part of the proposed split of the Auditor and Comptroller's office and the appropriate assignment of audit duties to the City Auditor (see discussion below). Note that under this amendment, the CFO shall be appointed by the City Manager (Mayor) and confirmed by the City Council, which is not the case at this time. With this amendment, the City Treasurer, a subordinate of the CFO, will no longer require confirmation by the City Council, which the IBA finds reasonable.

Audit Committee and City Auditor

As the IBA has recommended since our first report on the topic (IBA Report 06-35 dated 8/30/06) we believe the Audit Committee and City Auditor should be considered together, as they comprise the entire Audit Organization of the City. This will ensure that the most independent and effective infrastructure is in place to fulfill this purpose, one of the most important oversight functions in City government.

The recommendation by the committee is to establish a five member Audit Committee, two members of which are City Council Members (one of whom shall serve as chair) and three members are citizens with financial expertise, appointed by the Council. The committee has included a screening process that closely mirrors that proposed by the IBA in our original Report 06-35, for the appointment of these citizen members. The screening committee shall be comprised of one member of the City Council, the CFO, City Attorney, the IBA and two outside financial experts, who will then provide a pool of qualified candidates for Council consideration.

The City Auditor is appointed by the Mayor, in consultation with the Audit Committee, confirmed by the City Council and reports to the Audit Committee. The City Auditor shall be appointed for a 10 year term and may be terminated by the Audit Committee with a right to appeal to the City Council.

The recommendations forwarded by the committee mirror those by the IBA in our original report 15 months ago, except that the Audit Committee has been expanded from three to five members. The IBA continues to support this model for the Audit Organization for the City of San Diego.

Balanced Budget

The IBA supports the recommendation of the Charter Review Committee to clarify and strengthen a balanced budget requirement in the City Charter. The IBA worked with the subcommittee and the CFO to propose and scrutinize potential language for consideration. The language ultimately approved by the committee, which was proposed by the IBA and CFO, recognizes the roles of both the executive and legislative branches in the budget process and ensures that a balanced budget is adopted and maintained throughout the fiscal year.


City Manager/Chief Operating Officer

At the meeting of October 15, 2007, the City Council confirmed the Mayor's appointment of Jay Goldstone as Chief Operating Officer for the City of San Diego. During the discussion, a point of possible conflict in the City Charter was raised. While Article XV confers all the duties of the City Manager on the Mayor, it later allows the Mayor to appoint, direct and dismiss the City Manager (Section 265(b)(7) – (9)). Because this creates confusion, and because the current Mayor does not use the term City Manager, we suggest that the Council may wish to replace the words "City Manager" in the aforementioned sections with "Chief Operating Officer" or a similar term.


CONCLUSION

In this report, the IBA has noted support for recommendations of the Charter Review Committee including language for the IBA, CFO, Audit Committee and City Auditor, and the balanced budget requirement. While the IBA takes no position on the recommendation to expand the City Council, we have attempted to provide some historical information about the cost of the last redistricting effort and suggestions for expanding the Council in light of the increased veto override proposal. Finally, the IBA has made two recommendations for modifications:

1. If approving the committee's sunset revision proposal, include language that acknowledges that the Strong Mayor form of government is being made permanent. If there is a desire to keep a true trial period, provide for automatic placement on the ballot prior to the expiration of the period.
2. Consider amending the Section 265(b)(7)-(9) references to a City Manager by the Mayor to appointment of a Chief Operating Officer to reduce confusion with previous articles.



Penni Takade
Deputy Director



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachment

CITY OF SAN DIEGO
MEMORANDUM

Attachment 1

RECEIVED
C3 DEC 21 10:24
SAN DIEGO, CALIF.

DATE: December 15, 2000
TO: Honorable Mayor and City Councilmembers
FROM: George I. Loveland, Acting Assistant City Manager
SUBJECT: Year 2000 Redistricting Commission Budget

On October 6, 2000 seven commissioners were appointed to the 2000 Redistricting Commission, whose task is to redistrict the City into eight Council districts, each containing one-eighth of the City's total population to the extent that is practical. According to the City Charter the Commission must adopt a budget within 60 days of appointment, which includes a Chief of Staff who will serve the Commission, and the use of existing City staff to the extent possible. The budget is submitted to the Appointing Authority, which is a panel of three retired Superior Court Judges, for approval and then to the City Council for consideration. The Council must appropriate adequate funds to the Commission and to the City Clerk to carry out their duties.

At this time, the Commission has submitted a one-year budget totaling \$750,000 to the Appointing Authority for review on December 21, 2000. Based on direction provided by the Redistricting Commission, City staff assisted in the preparation of the proposed budget. Given staffing and salary guidelines, the budget outlines City positions that are comparable to the Chief of Staff, Assistant to the Chief, and three staff members. For example, the Chief of Staff's proposed salary and benefits is comparable to a Department Director. The budget includes support costs for the five positions requested, such as office space rent, furniture and computer equipment, as well as costs to perform the redistricting tasks, such as City staff support, mapping and graphic services, meeting expenses, and office supplies.

Attached for your advanced review is copy of the Redistricting Commission Proposed Budget. Also attached is the Chief of Staff job announcement that is currently being advertised in local publications, such as the San Diego Union-Tribune, the San Diego Asian Journal, Voice and Viewpoint, La Prensa, El Sol, Jobs Available, Uptown Publication, and Filipino Press.

Respectfully Submitted,


George I. Loveland

GL/klm

Attachments: 1. Redistricting Commission Proposed Budget
2. Chief of Staff Job Announcement

Attachment 3

RECEIVED
08 JUN 10 PM 4:27

CITY CLERK'S OFFICE
SAN DIEGO, CA

City of San Diego Year 2000 Redistricting Commission Proposed Budget

	12 Month Budget	18 Month Budget	Assumptions
1.00 Chief of Staff	143,490	215,235	Average salary (\$113,941) and benefits (\$29,549) comparable to a Department Director
1.00 Assistant to Chief of Staff	104,286	156,429	Average salary (\$81,153) and benefits (\$23,133) comparable to a Program Manager
3.00 Staff Members	229,785	344,678	Average salary (\$60,480) and benefits (\$16,115) comparable to a Senior Mgmt Analyst
Consulting/Legal Services	50,000	50,000	Legal Services beyond City Attorney support or other Consulting Services if needed
As-Needed Interpreter Services	5,400	8,100	Interpreter services for meetings, if necessary
City Clerk Support	20,000	30,000	City Clerk support and legislative recorder services
City Attorney Support	20,751	31,127	4 hours per week/2.24 positions
Manager's Office Support	9,804	14,706	4 hours per week/1.00 position
Office Supplies	5,000	7,500	Estimate \$1,000 per person
Postage	1,020	1,530	Assumes 3,000 pieces of mail per year at \$0.34
Transportation Allowance - Parking	2,250	3,375	Parking Stamps for Commissioners at the Concourse Parkade
Transportation Allowance - Mileage	950	1,425	Mileage reimbursement for 5.00 staff (city employees). \$.38/mile @ 500 miles/person
Advertising/Noticing	2,500	3,750	Advertising and noticing for events and meetings
Recording Equipment & Supplies	664	716	Recorder and two tapes per meeting
Print Shop Services	5,000	7,500	Photocopy costs, printing, graphic services, and preparation of informational brochures
Mapping Services	50,000	50,000	Mapping and overlay services
Redistricting/Mapping Software	7,000	7,000	AutoBound redistricting software for 2 systems @ \$3,500 each
Meeting Expenses	1,025	1,350	Refreshments for 26 Commission mtgs/year and 15 community mtgs @ \$25/mtg
Rent	19,035	28,553	225 sq.ft. per person @ \$1.41 sq.ft./month (includes gas, electric, common areas, etc.)
Office Furniture	8,700	8,700	5 desks, 5 exec chairs, 8 side chairs, 5 filing cabinets, 5 bookcases, 5 calculators
Modular/Cubicle Furniture	4,000	4,000	Three 8x8 cubicles (panels only, no furniture) clustered together with electrical power
Network Ready Computers	13,750	13,750	Computer, monitor and software installation for 5 staff people
Network Laser Printer	2,000	2,000	Mid-range Laser Printer
Printer Toner Cartridges	1,000	1,500	Assume need to replace 10/year @ \$100 each
Fax Machine	1,000	1,000	Mid-range Fax Machine
Phones	1,225	1,225	5-six button line phones, purchase and installation
Scanner	750	750	Mid-range Scanner
Network Access Charges	11,542	17,313	Yearly City access charges for Computers, Printer, Phones, Fax and Scanner
Hardware Maintenance	850	1,275	Estimate \$170 per computer
SDDPC Application Support/Labor	3,950	5,925	Estimate 10 hours/year per PC @ \$79/hour
Cell Phone	357	536	One cell phone for Chief of Staff (free phone, \$29.75/month)
Pagers	153	153	Two pagers for Chief of Staff and Assistant Chief (Apollo Pocsag alpha-numeric)
Contingency Reserve	25,000	25,000	For personnel negotiations or non-personnel emergencies (approx 3% of 1 year budget)
TOTAL	\$ 752,237	\$ 1,046,099	

If needed, a Laptop and Proxima Projector can be borrowed from the City's Information Technology Dept.

Attachment



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

Page 2 of 2

QUALIFICATIONS

The ideal candidate will have the following:

- Excellent verbal communication, writing and computer skills.
- Strong knowledge of the City's budget process.
- Strong management/supervisory skills.
- Ability to handle multiple assignments and work well under pressure.
- Be a self-starter with a high degree of initiative.
- Good judgement, a high degree of political acumen and effective interpersonal skills.
- Ability to deal with public officials, community leaders, the general public and others in a tactful manner.
- A working knowledge of the City of San Diego and it's diverse communities.
- A strong background in municipal government is highly desirable.
- Relevant experience, education and training which would provide the candidate with the knowledge, skills and abilities required to perform assigned duties.

COMPENSATION

- Salary to be negotiated and is contingent on qualifications.
- Generous benefits package available including various retirement savings, health insurance and life insurance options.

SELECTION PROCESS

Those interested in applying for the position should forward a letter of interest, current resume, three writing samples, and the names and telephone numbers of three professional references to: City Clerk's Office. Attn: Bonnie Stone. Elections Analyst. 202 C Street. San Diego, CA 92101 no later than 5:00p.m. on Monday January 15, 2001.

After a review of the submitted materials, a select number of candidates will be invited to participate in an interview.

The City of San Diego is an Equal Opportunity Employer.



Attachment 3
BRINGS US ALL TOGETHER



THE CITY OF

SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

CHARLES G. ABDELNOUR, J.D.
City Clerk, C.M.C.

Office of the
CITY CLERK
533-4000

December 1, 2000

Page 1 of 2

The Redistricting Commission for the City of San Diego is accepting applications for the position of:

Redistricting Commission
Chief of Staff

BACKGROUND INFORMATION

San Diego is the sixth largest city in the United States with a population of over 1.2 million citizens. San Diego operates under a Council-Manager form of government. The Council consists of a Mayor elected at large and eight Council members elected from districts.

The Redistricting Commission, subject to the provisions of the City Charter relating to referendum and initiative powers of the people, has the sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council. The Redistricting Commission must abide by San Diego City Charter, Article II, Section 5.1

THE POSITION

There is currently one vacancy for Chief of Staff. The position reports directly to the Redistricting Commission and will perform the following duties:

- (1) Assist the Redistricting Commissioners and provide technical and demographic assistance to analyze and formulate redistricting plans and maps.
- (2) Compile databases of election returns and demographic characteristics at the precinct/census tract level or other unit of analysis, as needed.
- (3) Compile expert reports, studies and court findings pertaining to redistricting.
- (4) Compile cases, statutes, resolutions, reports, learned treatises, etc. reflecting the existence of past and continuing discrimination in related to redistricting.
- (5) Produce informational/educational materials relevant to redistricting.
- (6) Work with the City Attorney's Office to obtain legal assistance where necessary to insure compliance with the Constitution, Voting Rights Act, Brown Act, and City of San Diego Charter.
- (7) Select, train and supervise subordinate staff.

NOTE: Length of employment is from February 2001 until the redistricting plan adopted by the Commission becomes effective and any and all legal and referendum challenges have been resolved.



DIVERSITY
IN THE WORKPLACE

Attachment 3

Report of the Audit Committee of the City of San Diego

INVESTIGATION INTO THE
SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
AND THE CITY OF SAN DIEGO SEWER RATE STRUCTURE

AUGUST 8, 2006

ARTHUR LEVITT, JR.
LYNN E. TURNER
TROY A. DAHLBERG

KROLL

WILLKIE FARR & GALLAGHER_{LLP}

3. Independent Auditor General

Currently, the functions of accounting and financial reporting are combined with the function of internal auditing in the Office of the City Auditor and Comptroller; in substance, the auditor audits his own work. Such a structure lacks the requisite level of independence widely viewed as essential for a sound financial reporting system.

To address the deficiencies that have been identified with respect to the independence and oversight of the internal and external financial reporting process, the Audit Committee is proposing the creation of an independent internal auditing function, and improved oversight of both the internal and external auditing process. This should also enhance the performance and credibility of these functions, as well as improve communication among the personnel involved. Our Remediation Plan assigns responsibility to the executive branch to make key appointments, and to the legislative branch to approve the appointments and to serve in an oversight role in the process.¹²⁸⁰ The Remediation Plan also depends upon the participation of citizens to ensure the independence of the oversight process, a requirement for any effective auditing function. Our recommendations follow:

The City should create a new position of Auditor General, with responsibility for internal audits of the City's: (1) internal controls; (2) financial accounting, reporting and disclosure; (3) operations; and (4) fraud, waste and abuse. The Auditor General should be nominated by the Mayor and appointed upon the consent of a majority of the City Council. The Auditor General should have experience with government accounting standards; government generally accepted auditing standards, preparation of government annual financial statements; and operational audits. The Auditor General should have a professional certification such as a Certified Public Accountant or a Certified Fraud Examiner.

The Auditor General should report to an Audit Committee (defined below) no less than on a quarterly basis and periodically to the City Council. In addition, the Auditor General should submit annually to the City Council a public report of his activities.¹²⁸¹

¹²⁸⁰ The GFOA has recommended that "[t]he internal audit function should be established formally by charter, enabling resolution, or other appropriate legal means." They have also recommended that "... internal auditors of state and local governments conduct their work in accordance with the professional standards relevant to internal auditing contained in the U.S. General Accounting Office's publication *Government Auditing Standards*, including those applicable to the independence of internal auditors." Finally they recommend that "[a]ll reports of internal auditors, as well as the annual internal audit work plan, should be made available to the government's audit committee or its equivalent." GFOA Recommended Practice, Establishment of an Internal Audit Function (1997 and 2006), Government Finance Officers Association (Feb. 24, 2006).

¹²⁸¹ We are aware that the City commissioned a Report from an independent accounting firm, Mayer Hoffman McCann P.C., regarding alleged improper billing practices. See Appendix Q. A California Grand Jury has investigated the City's use of Service Level Agreements to wrongfully siphon funding from the City's special Enterprise Funds into the City's general funds. The Auditor General should continue to monitor the progress of the investigations and the remediation of the Service Level Agreement issues identified by the Grand Jury. Service Level Agreements *Equal Back Door Funding*, San Diego Grand Jury 2005-2006 (Apr. 25, 2006); County of San Diego, California, Auditor

In order to protect against budget cuts that may unduly constrain the independent auditing process, the City's Audit Committee should approve the annual compensation of the Auditor General and the annual budget for the Auditor General's staff. The Auditor General should serve a term of 10 years, and could be removed from office for cause by the Audit Committee or upon an affirmative vote of three-quarters of the City Council.¹²⁸²

4. Audit Committee

Audit committees, familiar fixtures at companies seeking access to the U.S. capital markets as well as at many private companies, are not unknown to government issuers. Since 1997, the GFOA has recommended that "[e]very government should establish an audit committee or its equivalent."¹²⁸³

The auditor of a state or local government's financial statements must be independent, both in fact and in appearance. A properly constituted audit committee helps to enhance the financial statement auditor's real and perceived independence by providing a direct link between the auditor and governing board.

One important advantage of an audit committee is that it helps to facilitate communication between management, the auditors, and the governing board. An audit committee also limits the reliance governing bodies must place on the technical expertise of the independent auditor. An audit committee is useful, too, in helping to focus and document the government's process for managing the financial statement audit.¹²⁸⁴

In order to ensure objective oversight of the City's financial reporting process, the City should establish a three-member Audit Committee, with two members from the public and one member of the City Council. The two public members of the Audit Committee should have expertise in accounting, auditing and financial reporting and be capable of critical reading of financial statements. The Mayor should appoint the two members of the Audit Committee from the public, and these appointments should be confirmed by the City Council. The Audit Committee should establish a written charter that is made available to the public.

and Controller, Grand Jury Audit of the City of San Diego Metropolitan Wastewater Department Service Level Agreements, Report No. A06-019 (Feb. 2006).

¹²⁸² We note the Comptroller General of the United States is appointed for a fifteen-year term, and is confirmed by the Senate so as to ensure the independence of the position. Budget and Accounting Act, 1921, Pub. L. No. 67-13, 42 Stat. 23-24 (1921).

¹²⁸³ GFOA Recommended Practice, Establishment of Audit Committees (1997 and 2002), Government Finance Officers Association (Oct. 25, 2002), *available at* <http://www.gfoa.org/services/rp/caafr-establishment-audit-committee.pdf>.

¹²⁸⁴ GFOA Recommended Practice, Establishment of Audit Committees (1997 and 2002), Government Finance Officers Association (Oct. 25, 2002), *available at* <http://www.gfoa.org/services/rp/caafr-establishment-audit-committee.pdf>.

Consistent with the established practice for other entities gaining access to money from the investing public, the City's independent auditors should be retained by, report to, and take direction from, the Audit Committee. We would expect that the CFO and Auditor General, as supporting staff to the Audit Committee, would assist in this process. However, the final decision would be that of the Audit Committee.

The Audit Committee should meet quarterly, or more often if necessary, with the City's independent auditors, the City's Auditor General and the CFO. The Mayor, CFO, City Attorney and City Council should have the authority to make requests of the Audit Committee and Auditor General to perform internal audits of material matters they reasonably believe to be warranted. Private sector members of the Audit Committee shall be compensated in an amount set by the Mayor and approved by the City Council.¹²⁸⁵

To discourage any improper influence of the professionals who serve as "gatekeepers" to the public financial reporting process of the City, the Municipal Code should be amended to add criminal penalties for such conduct. It should be unlawful for any elected official, or employee of the City, or anyone acting under their direction, to take any action to corruptly influence, coerce, manipulate or mislead any independent certified public accountant engaged in the performance of an audit of the financial statements of the City or its component units, or outside legal counsel performing services for the City in connection with an offering statement of the City, or any actuary performing an actuarial valuation in connection with the preparation of the City's or SDCERS's CAFRs, or employees of a bond rating agency performing a credit rating of the City's bonds.

5. Ensuring Protection for Whistleblowers

The new Audit Committee should have responsibility for the establishment and monitoring of effective policies and procedures for dealing with "whistleblower" complaints, including an internal hotline. In that regard, the Audit Committee should receive a report of each such complaint and, in consultation with the Auditor General, determine the appropriate course of action. The Auditor General should report to the Audit Committee the results of any investigation and disposition of such complaints. Documents reflecting

¹²⁸⁵ We note that Vinson & Elkins, as part of its report, made two recommendations that have been adopted by the City which bear directly on this aspect of the Remediation Plan. First, as noted above, Vinson & Elkins recommended the creation of a Disclosure Practices Working Group, which we have endorsed as part of this Plan. See San Diego Municipal Code §§ 22.4101-4109. Second, Vinson & Elkins recommended the establishment of a Financial Reporting Oversight Board, with authority to review and evaluate the City's annual report on disclosure controls made by the Disclosure Practices Working Group, the City's independent auditor's management letter (and the City's response), and the City's annual report on internal controls, and also with the authority to recommend procedures for receiving and responding to so-called "whistleblower" complaints related to accounting, auditing or material control matters. See San Diego Municipal Code §§ 26.1701-1704.

We recommend as part of the Remediation Plan that the Financial Reporting Oversight Board be eliminated as redundant because all of its functions (and additional ones) will be assumed by the new Audit Committee.



Association of Local Government Auditors

November 27, 2007

To the San Diego Union-Tribune Editors,

OFFICERS

President
George McGowan
Manager, Audit Services
and Management Support
Orlando, FL

President Elect
Jerry Shaubel
Director
Toronto, ON

Secretary
Lou Lassiter
Internal Audit Director
Chesterfield, VA

Treasurer
Amanda Noble
Deputy City Auditor
Atlanta, GA

Past President
Jim Williamson
Assistant City Auditor
Oklahoma City, OK

BOARD MEMBERS AT LARGE

Ross Tate
Maricopa County Auditor
Phoenix, AZ

Mike Edmonds
Chief Deputy City Auditor
Oakland, CA

Bill Greene
Deputy City Auditor
Phoenix, AZ

Beth Breier
Audit Manager
Tallahassee, FL

MEMBER SERVICES

449 Lewis Hargett Circle
Suite 290
Lexington, KY 40503
Phone: (859) 276-0686
Fax: (859) 278-0507

www.governmentauditors.org
memberservices@governmentauditors.org

As representatives of local government auditors in the U.S., Canada, and an increasing number of governments worldwide, the Advocacy Committee of the Association of Local Government Auditors applauds steps the City of San Diego has taken to increase accountability.

We concur with your editorial support for an independent auditor with a ten-year term, reporting to an independent audit committee. We also concur with the idea of professional certification for the auditor, whether as a Certified Public Accountant (CPA) or as a Certified Internal Auditor (CIA). However, to ensure independence, both in fact and in appearance, the City Auditor should be appointed either by the Council or by the Audit Committee, and not by the Mayor.

Regarding the Audit Committee, we respectfully disagree with the plan for management (the Mayor) to select **any** members of the Audit Committee. We believe that this structure would compromise the independence of **both** the Audit Committee and the City Auditor, and contradicts best practices in government audit committee composition.

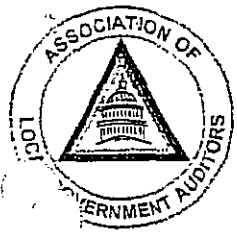
The Kroll recommendation is based on 1997 guidelines from the Government Finance Officers Association (GFOA), which permitted management appointment of the two non-legislative members of a five person audit committee. GFOA refined its guidance in 2006 to give all appointing authority to the governing body, and in fact recommended that all members should be legislators, with expert advice provided by consultants hired by the committee. This is the practice that the San Diego City Council is currently following.

One of the reasons for legislative control cited in the 2006 guidelines was the importance of establishing the credibility of the committee, based upon its real and perceived authority. Since the Mayor is now the City's primary manager, and the Audit Committee provides essential oversight on behalf of the public, it is important that **all** members of the Audit Committee be completely independent of the management function performed by the Mayor.

What we have recommended, both in our model legislation and in the guidance we have provided to the Council, is a merging of the two models, with a mixture of five or seven members, including Council Members and outside experts they select. Collectively, committee members must have expertise in a variety of fields including accounting, business practices, and auditing. Therefore, we concur with the Charter Committee's recommendation of two Council Members and three experts appointed by Council. We believe that this structure will optimize the credibility and competence of both the Audit Committee and the City Auditor.

Sincerely,

Jay Poole,
National Chair, Advocacy Committee,
Association of Local Government Auditors



Association of Local Government Auditors

Council President Scott Peters, Members of the San Diego Charter Review Commission and City Council
City Administration Building
202 "C" Street
San Diego, California 92101

OFFICERS

President
George McGowan
Manager, Audit Services
and Management Support
Orlando, FL

President Elect
Jerry Shaubel
Director
Toronto, ON

Secretary
Lou Lassiter
Internal Audit Director
Chesterfield, VA

Treasurer
Amanda Noble
Deputy City Auditor
Atlanta, GA

Past President
Jim Williamson
Assistant City Auditor
Oklahoma City, OK

BOARD MEMBERS AT LARGE

Ross Tate
Maricopa County Auditor
Phoenix, AZ

Mike Edmonds
Chief Deputy City Auditor
Oakland, CA

Bill Greene
Deputy City Auditor
Phoenix, AZ

Beth Breier
Audit Manager
Tallahassee, FL

MEMBER SERVICES

449 Lewis Hargett Circle
Suite 290
Lexington, KY 40503
Phone: (859) 276-0686
Fax: (859) 276-0507

memberservices@nalga.org
www.nalga.org

Dear President Peters and Members of Charter Review Commission and Council,

The Association of Local Government Auditors is pleased to hear that the Charter Review Commission and the Audit Committee are reviewing proposed amendments to the City Charter. Completely separating the audit function from the financial and accounting functions and creating an independent, legislatively-appointed performance audit function will enhance government accountability.

Based on a review of the Charter Review Commission's, the Mayor's, and the Independent Budget Analyst's proposals, ALGA would like to urge the Charter Review Committee and the Council to adopt language based on ALGA's *Model Legislation Guidelines for Local Government Auditors (Third Edition 2007)*. Our guidelines are based on *Generally Accepted Government Audit Standards (GAGAS)* issued by the United States Government Accountability Office.

The most significant threat to auditor independence and public accountability that we see in the current proposals is the question of who hires and who fires the City Auditor. GAGAS defines independence as independence from *management*, in this case the City Manager/Mayor. The proposal that the City Auditor be appointed by the Mayor and removed from office by the Mayor unless a supermajority of Council objects does not reflect best practices in city governance. In actual practice, such a proposal may also result in interference with audits and would adversely impact the City Auditor's ability to report objectively to the public and the Council.

Also, the draft legislation omits language regarding appointment of the audit staff, which we suggest be granted to the City Auditor. We would further suggest that the Charter language more succinctly state the Powers and Duties/Scope of Audits and require conformance with GAGAS, rather than referencing two different sets of standards. The requirement for a written response from the City Manager/Mayor, and a requirement that audits be made public (usually on the City Auditor's web site) are also key elements of a successful audit function.

Please do not hesitate to contact ALGA at (859) 276-0686, or to contact me directly at (757) 382-8511, Harriet Richardson at (415) 554-5393, or Ann-Marie Hogan at (510) 981-6750. We would welcome the opportunity to be of assistance in drafting alternative guidelines and legislation.

Sincerely,

Jay Poole

Jay Poole

Advocacy Committee Chair, Association of Local Government Auditors

cc: Mayor Jerry Sanders
Independent Budget Analyst Andrea Tevlin for distribution to Charter Review
Committee
City Attorney Michael Aguirre
Press

5

AUDIT COMMITTEES

Question 9:

Who should serve on an audit committee?

The members of an audit committee should *all* be members of the governing body for two principal reasons. First, one of the core responsibilities of the legislative branch of government is to oversee the executive branch (including its financial management). As a rule, a core responsibility *cannot* be delegated. Second, the credibility of the audit committee (and hence its effectiveness) inevitably will depend on both its *real* and *perceived* authority. The process of delegation inherently weakens both by opening a gap between the audit committee and actual decision makers.¹⁹

While all members of the audit committee should be members of the governing body, it does *not* follow that any and all members of the governing body automatically should be eligible to serve on the audit committee. As mentioned previously, one of the key benefits of an audit committee is that it should provide a forum in which the independent auditors can candidly discuss audit-related matters with members of the governing body *apart from management*. This benefit would be lost, of course, were someone from management to serve as a member of the audit committee. Therefore, no member of the governing body who exercises financial management responsibilities should serve as a member of the audit committee.²⁰

19. In the private sector, the Sarbanes-Oxley Act requires that all members of the audit committee be members of the governing board as well. (Alternatively, the governing board as a whole could serve as the audit committee.)

20. Likewise it would be inappropriate for the audit committee to delegate responsibilities to such an individual.



CHARTER REVIEW RECOMMENDATIONS

**Audit Committee Composition
Overview of Issues
August 2006 – December 2006**

Office of the Independent Counsel

1/1/07



Kroll Recommendations –

August 2006

- Three members – 1 Councilmember and 2 citizen experts
- Citizens to be appointed by Mayor, confirmed by Council
- Cited obsolete 1997 GFOA guideline permitting management appointment of Audit Committee members (no longer recommended)



Response

IBA Report 06-35, August 30, 2006

- "This proposal does not provide the necessary independence from management to effectively serve the oversight function."
- "This proposal is inconsistent with national guidelines and best practices established by reputable advisory organizations."



Response

IBA Report 06-35, August 30, 2006 (cont'd.)

- "IBA recommends that the City of San Diego require the legislative body to make the two private citizen appointments consistent with best practices."
- GFOA revised their guideline in 2006 to advise that municipal Audit Committees consist of only legislative body members. Association of Local Government Auditors (ALGA) and others strongly recommend that management have no involvement in selecting Audit Committee members but support citizen experts provided they are appointed by the legislative body.



City Attorney's Position - September 2006

- City Attorney opined current Charter does not allow anyone but Mayor to appoint members of advisory boards.
- The City Council cannot delegate financial responsibility to non-board members (i.e. citizens).
- Citizens cannot oversee the work of a department (i.e. City Auditor).
- Charter revisions are necessary to implement Kroll or similar model.



Creation of Audit Committee - January 2007

- Pending future Charter revisions, the City's first Audit Committee was implemented in January 2007 consisting of three members of the legislative body.
- Three citizen experts have been empanelled to serve in an ad hoc, advisory capacity.
- Jefferson Wells has been hired to provide professional consultant expertise.



Mayor's Charter Review Committee – May – September 2007

- On August 23, 2007, the Financial Reform Subcommittee recommended the following to the full committee:
 - Five-member committee, 2 Councilmembers and 3 citizen experts
 - Two citizens to be nominated by the Mayor and confirmed by Council; 1 citizen to be appointed by Council
 - Councilmember to serve as Chair
 - The item was referred back to Subcommittee for further discussion



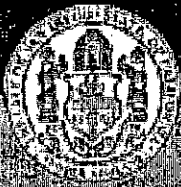
Mayor's Charter Review Committee – May to September 2007 (cont'd.)

- IBA Testimony, August 23, 2007:
 - "Neither the Kroll recommendations nor the Subcommittee's proposal provide the necessary independence from management."
 - "IBA recommends that you require the legislative body to make the citizen expert appointments as endorsed by accepted practices."
 - "We also recommend that the Audit Committee be made up of a majority of Councilmembers, providing for three Council members to serve in this capacity rather than two."



Mayor's Charter Review Committee – May to September 2007 (cont'd.)

- After hearing additional testimony from ALGA and others, on September 21, 2007 the Financial Reform Subcommittee recommended the following to the full Committee:
 - Five members, including 2 Councilmembers and 3 citizen experts
 - All citizen members to be appointed by legislative body utilizing a pre-screening process
 - A Councilmember is to serve as chair
- The Charter Review Committee approved this motion by a vote of 12-1.



Mayor's Response to Committee Recommendations – November 2007

- In a memorandum to the Council dated November 5, 2007, the Mayor recommended the following:

"Contrary to the Committee's recommendations, I recommend the Audit Committee, consistent with the Kroll Report, to be composed of a total of three members, including one member of the Council and two highly qualified, outside professionals appointed by the Mayor, one of whom chairs the Committee."



San Diegans for City Hall Reform – December 2007

- On December 12, 2007, John Davies, Proponent, and Bob Nelson, Proponent, submitted to the City Clerk's Office the text for a Charter amendment entitled "REAL ACCOUNTABILITY, CHECKS AND BALANCES IN CITY GOVERNMENT." Recommendations include:
 - The Audit Committee to consist of three members, two members of the public and one Councilmember
 - The two public members are to be appointed by the Mayor and confirmed by the Council
 - The Chair of the Audit Committee should be selected by the Audit Committee



IBA Recommendation – January 8, 2008

- Support Charter Review Committee's recommendations for composition of Audit Committee:
 - Five members, two council and three citizen experts to be appointed by legislative body
 - Councilmember to serve as chair
 - Three Councilmembers and two citizen experts would also be acceptable

January 7, 2008

To Council members: Kevin Faulkner, Toni Atkins and Tony Young
Audit Committee Meeting of January 7, 2008

From: Barbara Cleves Anderson former member of the 2007 Charter Committee

Regarding: Item #3 on the docket-Review of the 2007 Charter Committees Final
Report on the Audit Committee and Internal Auditor

Dear Audit Committee Members;

I am unable to attend the Audit Committee Meeting today but would like to state the reasons why I think that the Internal Auditor should be appointed and not elected. If you have read our recommendations to the City Council, you will see that we were divided on our votes.

First, the Audit Committee members should be well-qualified auditors that have the best experience. I believe that the panel should be made up of three experienced auditors and two council members. I also believe that the mayor may have a vote but the council member should take the lead in the decision.

Second, the council without the mayor's input should vet and appoint the Independent Internal Auditor. There should be no suggestion of impropriety or coercion by the mayor's office.

The reasons that I think that the Independent Auditor should be appointed are: To run for the office one would need to garner support and monies from persons or groups that might make the candidate feel beholden; The Independent Auditor should not be a popularity contest; not someone who has the best personality or the most well known; The Independent Budget Analyst, Andrea Tevlin, is truly independent and was appointed by the council. She is well qualified; experienced and was well vetted. I think she should be part of the interview process for the auditor.

Finally, we all know that the Independent Auditor decision is one of the most important the council will make. The media has made much of the Charter Committee and that we were not independent. Maybe some weren't but we all took the job very seriously and made our votes after much thought and study. My hope is that you and the other council members won't discount all of our hard work.

Thank you,
Barbara Cleves Anderson
murraymavo@aol.com
619-463-9706



CHARTER REVIEW RECOMMENDATIONS

Appointment of the City Auditor
Overview of Issues
August 2006 – December 2006

Office of the Independent Review

11/1/06



Kroll Recommendations – August 2006

- Auditor General (City Auditor) to be appointed by the Mayor, subject to Council confirmation
- Report directly to the Audit Committee
- 10-year term and removal only by the legislative body



IBA Response – Report 06-35, September 2006

"The IBA supports the Kroll recommendation that the Mayor appoint the Auditor General (City Auditor), subject to confirmation of the legislative body, provided the Auditor reports directly to the Audit Committee and the Audit Committee members are appointed by the legislative body to ensure the Auditor's independence from management."



Charter Review Committee Recommendation – August / September 2007

- Appointed by the Mayor, in consultation with the Audit Committee, confirmed by the Council
- Reports directly to the Audit Committee
- Appointed for 10-year term
- May be terminated by the Audit Committee with 4/5th's vote and right to appeal to Council with 2/3rd's vote to override



Charter Review Committee Recommendation – August / September 2007 (cont'd.)

- August 23 – By unanimous vote, the item was tabled and returned to Financial Reform Subcommittee for further discussion along with the Audit Committee item
- September 21 – Subcommittee recommendation passes 7 – 6



Mayor's Response to Committee Recommendations - November 2007

- Mayor's comments in November 5, 2007,
Memorandum to City Council:

"I support this Committee's recommendation. It allows the Auditor to have independence and strengthens the Audit Committee."



San Diegans for City Hall Reform - December 2007

- The City Auditor shall be appointed by the Audit Committee. (Under their proposal the Audit Committee would consist of 2 citizens appointed by the Mayor and 1 Councilmember.)
- The City Auditor shall serve a 10-year term.
- The Audit Committee may remove the City Auditor from office upon providing reasons in a written report to Council.



IBA Recommendation - January 8, 2008

- Support Charter Review Committee's recommendations for appointment of the City Auditor:
 - Appointed by Mayor for 10-year term, in consultation with the Audit Committee, confirmed by Council.
 - This support is predicated on the Auditor reporting directly to the Audit Committee and all Audit Committee members being appointed by the legislative body.
 - Given the above scenario, it would also be acceptable for the Audit Committee to appoint the City Auditor.

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Review of the San Diego City Charter and Possible Committee Action in Response to the Recommendations Contained in the Report

☒ Reviewed ☐ Initiated By Rules On 11/07/07 Item No. 1

RECOMMENDATION TO:

Accept the report, with direction by common consent that the recommendations of the Charter Review Committee be referred to City Council along with a detailed summary of the comments made by members of the Rules Committee (See Attachments 1 and 2). The Committee also directed that recommendations related to the Chief Financial Officer, Auditor, and Audit Committee be reviewed by the Audit Committee and that the Budget Committee review the recommendation regarding a balanced budget.

VOTED YEA: N/A

VOTED NAY: N/A

NOT PRESENT: N/A

CITY CLERK: Please reference the following reports on the City Council Docket:

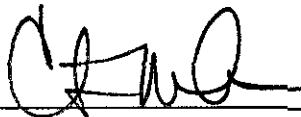
REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

2007 San Diego City Charter Review Committee Final Report; Charter Review Committee's Executive Summary; Independent Budget Analyst's Report No. 07-102; Independent Budget Analyst's November 7, 2007, PowerPoint; City Attorney's November 2, 2007, report; Mayor Sanders' November 5, 2007, memorandum

COUNCIL COMMITTEE CONSULTANT _____



ACTIONS

Committee on Rules, Open Government, and Intergovernmental Relations

November 7, 2007

- 3 -

ATTACHMENT 1

Rules Committee Member Comments Regarding the Recommendations of the Mavor's Charter Review Committee

Rules Committee – November 7, 2007

In addition to the summary below of general and introductory comments by members of the Rules Committee, the attached matrix summarizes the committee members' comments on specific charter amendments.

Peters – Introductory Comments

- Prior to the cancellation of the October 24, 2007 Rules Committee meeting because of the San Diego wildfires, two Rules Committee meetings were planned for review of these proposals before referral to the City Council. Now, however, there are not enough Rules Committee meetings left in 2007 to have two reviews before the end of the year. Instead, the plan will be to have two hearings at the full City Council during January and February of next year prior to the filing deadline for the June 2008 ballot.
- The goal of today's Rules Committee meeting will be to provide input on all of the Charter Review Committee's recommendations and forward all of the items to the City Council.
- Don't lose sight of the effect of Prop F.
- Can't think of who would want to go back to a system in which the City Council did not have its own independent budget and policy analysis and was dependent on the City Manager for its information.
- Some people are concerned that the Charter Review Committee is not an elected commission. It is important to remember that City Councilmembers, who ultimately decide whether to place the recommendations of the Charter Committee on the ballot, are elected by district.

Madaffer – General Comments

- Charter is the City's Constitution. It should not be written to respond to specific problems of the day, but to serve as a global guiding document.
- The Municipal Code is the place to address day to day issues.
- Operational issue demand that certain of these recommendations be placed on the ballot promptly

Frye – General Comments

- Only a few of these recommendations need to be on the June 2008 ballot.
- The public needs adequate time to understand the proposals
- Supports holding additional hearings – one of which should be during the evening – before making decisions to place any items on the ballot.

ACTIONS
Committee on Rules, Open Government, and Intergovernmental Relations
November 7, 2007

- 4 -

Tony Young – General Comments

- Not satisfied that there was an adequate community process in the development of the recommendations.
- In addition to taking community input at the beginning of their process, the Charter Review Committee should have returned to the community for input after they had developed their specific recommendations.
- Not in a hurry to place these items on the ballot. Focus should be on doing a good job of thoughtfully reviewing the City's constitution with an emphasis on community input.
- Some of the issues here should be referred to other Council Committees.
- Favors carefully selecting just a few urgent issues to place on the June ballot.

ATTACHMENT 2

Rules Committee Member Comments Regarding Specific Recommendations of the Charter Review Committee

(Speakers are ordered right to left in the order they spoke)

No	Issue	Charter Review Committee Recommendation	Madaffer	Frye	Young	Peters
1	Sunset Provision	Extend trial period to 12/31/2014 and make permanent at that time unless there is a ballot measure to the contrary.	It is too early to consider extending the trial period. The voters voted for a trial period until 2010 and we should honor that commitment.	Let the trial period run before this question is put to the voters.		
2	Mayoral Veto	Requires a 2/3 vote to override a mayoral veto. Where a supermajority is required for passage, a veto override requires a supermajority plus one.	It is premature to modify this until the decision regarding retention of the mayor-council is made. The Current arrangement is not problematic because it promotes cooperation between the Mayor and Council.			
3	Number of Council Seats	Increase the number of City Council districts from eight to eleven as soon as practicable	It is premature to modify the number of Council seats until a decision regarding retention of the mayor-council is made. If the Council is increased to an odd number then returns to the City Manager form of government there will again be an even number. In any case, if increased, there should only be nine members. The overall budget for all Council offices should not be increased. Opposed at-large Council seats. Opposed interim redistricting for fiscal reasons.	There should be a redistricting process and new census data before adding any new seats. It is premature to modify the number of Council seats until a decision regarding retention of the trial form of government.	The power of Council districts may be diluted if seats are added. Having more Council seats empower the Mayors office but not necessarily communities. Opposed to at-large council seats. Favors nine districts over eleven.	We have among the largest council districts in the country. More Council districts may give a role to more communities than have a role today.

500005

ACTIONS
Committee on Rules, Open Government, and Intergovernmental Relations
November 7, 2007

- 6 -

No	Issue	Charter Review Committee Recommendation	Madaffer	Frye	Young	Peters
4	Role of the IBA	Authorize the IBA to provide both budgetary and policy analysis to the City Council.	Supports making the IBA permanent irrespective of whether strong mayor-council is retained. Clarify that the IBA provides both budget and policy analyst to the City Council. Consider for June Ballot	Supports making the IBA permanent irrespective of the form of government.		Addition of the Independent Budget Analyst has been an invaluable resource to the City Council. Prior to the implementation of the Strong Mayor-Council form of government, the IBA illegal Not sure of the need for both a City Manager and an IBA if Strong Mayor-Council is not retained. Roles may be redundant when both report to the same entity. Need to think through how the positions of City Manager and IBA would be structured in their reporting if there is a reversion.
5	Role of the CFO & City Treasurer	CFO – providing that the CFO shall assume the duties of the City Auditor and Comptroller and <i>clarifying that the CFO is an unclassified position.</i>	The CFO should assume duties of Comptroller but not the auditor. Consider for June Ballot	CFO should assume role of the Comptroller. Consider for the June Ballot Referral: Audit Committee	Referral: Audit Committee	Referral: Audit Committee

900000

ACTIONS
Committee on Rules, Open Government, and Intergovernmental Relations
November 7, 2007

- 7 -

No	Issue	Charter Review Committee Recommendation	Madaffer	Frye	Young	Peters
		Treasurer – remove the requirement for Council confirmation of the City Treasurer	Prefers that all department heads be confirmed by Council including the Treasurer. Consider for June Ballot	Consider for the June Ballot Referral: Audit Committee	Referral: Audit Committee	Referral: Audit Committee
6	Audit Committee	Establishes a five-member Audit Committee comprised of two City Councilmembers and three members of the public. The public members will be nominated by the City Council from a pool of candidates created by a screening committee comprised of the CFO, IBA, a Councilmember and two members of the public.	Agrees with the Charter Committee proposal Consider for June Ballot	Disagrees with the Charter Committee recommendation. Mayor should have no role in appointment of members. Consider for June Ballot Referral: Audit Committee and City Attorney to review the legality of the Audit Committee's duties in light of Charter Section 11.1	The community may not support three outside members making decisions for the Citizens of San Diego. The kinds of people who will be appointed are not going to identify with community members. Favors having elected officials on the audit committee with expert advice. If there are some outsiders, they should in the minority. Referral: Audit Committee	Kroll's and Mayor's recommendation would have cut out the Council. Charter Committee gave the Council a role. Consider for June Ballot Referral: Audit Committee

ACTIONS
Committee on Rules, Open Government, and Intergovernmental Relations
November 7, 2007

- 8 -

No	Issue	Charter Review Committee Recommendation	Madaffer	Frye	Young	Peters
7	City Auditor	City Auditor is appointed by the City Manager (Mayor) in consultation with the Audit Committee and confirmed by the City Council. Auditor must be a CPA or Certified Independent Auditor. 10-year term of office. Auditor reports to the Audit Committee which may terminate the Auditor for cause with a 4/5 vote. The decision to terminate is appealable to Council.	Auditor needs to be independent of the Mayor and the Mayor should have no role in the selection of the City Auditor Consider for June Ballot	There is an urgent need to fix the structure of the City Auditor. Mayor should have no role in appointing. Auditor must be independent of the Mayor. Supports an elected City Auditor Referral: Audit Committee	It is important to fix this issue. Sees positive aspects to both elected and appointed auditors. Currently more favorable to an elected auditor. Consider for June Ballot Referral: Audit Committee	More concerned about who the Auditor reports to than who has a role in appointing the auditor. The auditor must be independent from management not from the Council. Does not support an elected auditor. Consider for June Ballot Referral: Audit Committee
8	Balanced Budget	Requires the City to adopt a balanced budget and establishes procedures to keep the budget balanced throughout the fiscal year.	Agrees with the Charter Committee proposal Consider for June Ballot	Referral: Budget Committee	Referral: Budget Committee	Referral: Budget Committee
9	Managed Competition	Exempts Police Officers, firefighters and lifeguards from Managed Competition	Agrees with the Charter Committee proposal Consider for June Ballot	EMS personnel are already contracted out. We need a better definition of what can and cannot be contracted out.		

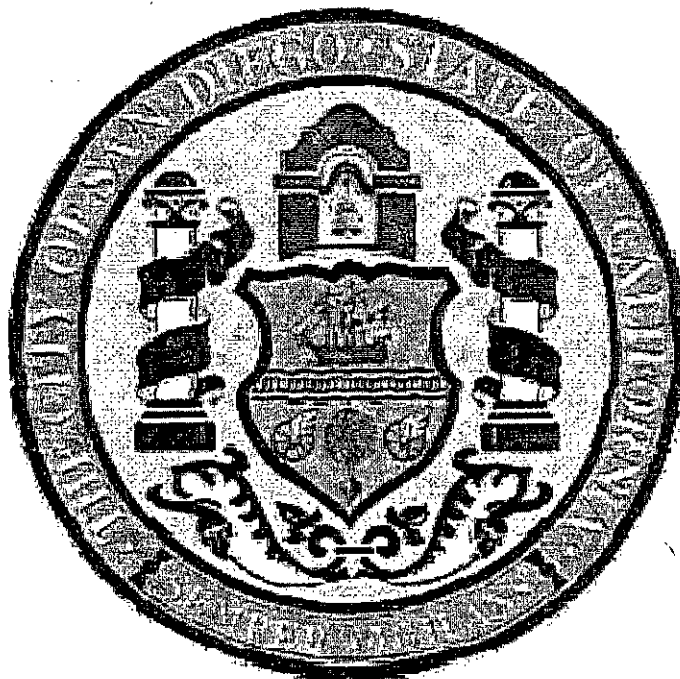
ACTIONS
Committee on Rules, Open Government, and Intergovernmental Relations
November 7, 2007

- 9 -

No	Issue	Charter Review Committee Recommendation	Madaffer	Frye	Young	Peters
10	Role of the City Attorney	Defines the civil client of the City Attorney as the San Diego municipal corporation. Clarifies the authority related to settlement of lawsuits and the authority of the municipal corporation to retain outside legal counsel when the City Attorney's office may not provide such services due to conflict of interest.	Willing to hear more on this issue			This is not working now. Most people understand that you cannot rely on someone for confidential legal advice one day when you have to worry that that same person will prosecute you the next day. We ought to clarify the role of the civil legal advisor. New York City Charter may provide a model to examine.
11	Setting Elected Officials' Salaries	Alters the salary setting process for all elected officials. Establishes professional qualifications for the members of the salary setting commission, compels the City Council to adopt the recommendations of the Salary Setting Commission, and prohibiting the Mayor from vetoing their recommendations.	Salary Setting Commission should make the final decision and the City Council should not participate in the setting of their own salaries Consider for June Ballot	Salary Setting Commission should make the final decision and the City Council should not participate in setting of their own salaries. May not need to be on the June ballot, but needs to be done. Referral: City Attorney to review the legality of this proposal in light of Charter Section 11.1.		The Charter Review Committee proposal still requires that the Council vote on elected official salaries and that they vote "yes." It would be more appropriate that the Council not vote at all on their salaries.

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



000013

THE CITY OF SAN DIEGO

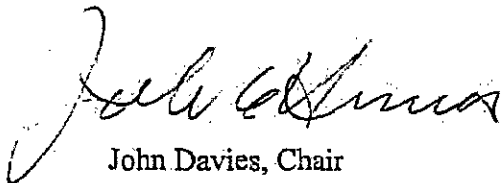
October 4, 2007

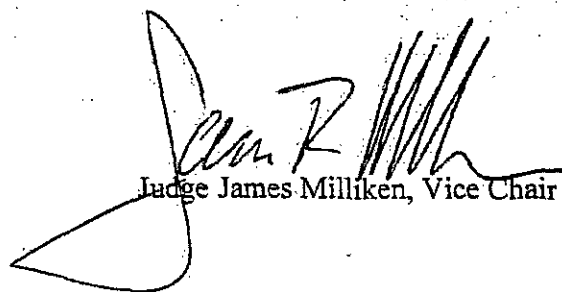
We are pleased to submit this Report of the 2007 San Diego Charter Review Committee. It is the result of a great deal of work by the Committee members, our consultants and staff, and by representatives of the City Attorney and Independent Budget Analyst, and reflects public testimony received at 51 public 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,

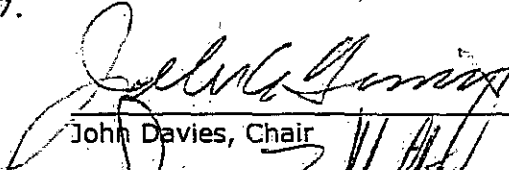

John Davies, Chair


Judge James Milliken, Vice Chair



000014

Executed this 4th day of October, 2007.

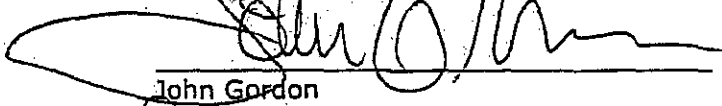

John Davies, Chair



Judge James Milliken (Ret), Vice Chair


Barbara Cleves Anderson

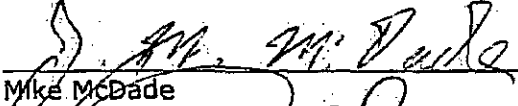

Alan Bersin


Professor Susan Adler Channick


John Gordon


Donna Jones


Adrian Kwiatkowski


Mike McDade

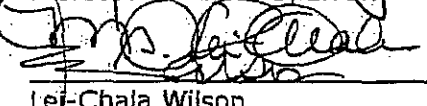

Vince Mudd


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

2007 Charter Review Subcommittees and Members:

<u>Duties of Elected Officials</u>	<u>Financial Reform</u>	<u>Interim Strong Mayor</u>
Chair:	Chair:	Chair:
Mike McDade	Donna Jones	Alan Bersin
Members:	Members:	Members:
Susan Channick,	John Gordon,	Barbara Cleves Anderson,
Mark Nelson,	Judge James Milliken,	John Davies,
Duane J. Roth,	Vincent Mudd,	Adrian Kwiatkowski,
Marc Sorensen	Lei-Chala Wilson	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 Kavar
 Jeff Sturak
 Penni Takade
 Andrea Tevlin

	Page
Introduction	6
Summary of Charter Recommendations	
I. Charter Recommendations for the 2008 Ballot	8
Interim Strong Mayor and Legislative Tightening	
1. Sunset Revision	11
2. Veto Override	12
3. Eleven-Member City Council	13
4. Independent Budget Analyst	14
Financial Reform and the Kroll Report	
5. Chief Financial Officer	15
6. Audit Committee	16
7. City Auditor	17
8. Balanced Budget	18
Duties of Elected Officials	
9. Managed Competition	19
10. Modification of Section 40	20
11. Salary Setting Commission	21
II. Charter Recommendations for a Later Ballot	
12. Appointments to Outside Organizations	23
13. Redevelopment Agency	24
14. Personnel Director	25
III. Items Upon Which No Changes Are Recommended	
15. Composition of SDCERS Board of Administration	26
IV. Municipal Code Recommendations	
16. Audit Committee (to codify Charter Amendment)	27
17. City Auditor (to codify Charter Amendment)	27
V. Items Researched, but Needing Further Study by a Future Charter Committee or Commission	
18. Appointment of City Attorney	29
19. Automatic Charter Review	29
20. Budgetary Authority	29
21. City Investment Policies	29
22. Filling Vacancies	30
23. Independent Budget Analyst's Status	30
24. Integration of Strong Mayor Concept into City Charter	31
25. Intergovernmental Relations	31
26. Mayor's Role in Closed Session	31
27. Possibility of Opting into CalPERS	32
28. Timing of Budget Process	32

<u>APPENDIX ONE</u>	
PUBLIC COMMENT LIST	33
INVITED SPEAKERS LIST	35
RESEARCH RESOURCES	39
<u>APPENDIX TWO</u>	
PROPOSED CHARTER LANGUAGE FOR RECOMMENDED CHANGES	46
LANGUAGE RECOMMENDED FOR ADDITION TO THE MUNICIPAL CODE	78
<u>APPENDIX THREE</u>	
STAFF BRIEFINGS, MEMORANDA AND REPORTS SUPPORTING THE RECOMMENDED CHARTER AND CODE CHANGES	
Attachments in Volume 2	81
<u>APPENDIX FOUR</u>	
OTHER MATERIALS REVIEWED BY THE COMMITTEE IN CONNECTION WITH THE RECOMMENDED CHARTER AND CODE CHANGES	
Attachments in Volume 3	303-

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 referendum 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, SORESENSEN, 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

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, SORESENSEN, 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.

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.

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, SORESENSEN, 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,

000042

28

KWIATKOWSKI, MILLIKEN, MUDD, NELSON, ROTH, SORESENSEN, 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 FORUMS⁶**

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.	May 11, 2007 Full Committee meeting
	Charter Sections 57 & 58.	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	Recommendations contained in the Kroll Report.	May 18, 2007 Financial Reform Subcommittee meeting
CFO and Acting COO for San Diego	Personnel Director in Comparative Perspective.	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.	April 27, 2007 Full Committee meeting
	Comments on need for Charter reform.	June 28, 2007, Public Forum, Council District 1
	Filling Vacancies and Establishing Salaries.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
	Council members' assignments to Council committees, e.g. Audit.	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.	April 27, 2007 Full Committee meeting
	The importance of Charter reform for the City.	June 28, 2007, Public Forum, Council District 1
	Commending public participation in the Charter change process.	July 19, 2007, Public Forum, Council District 8

Mayor Sanders, cont'd	Thanking community members for involvement in Charter reform.	July 24, 2007, Public Forum, Council District 4
	Appreciation of public participation in important work of Charter Review Committee.	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.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
	The responsibilities of the Personnel Director.	July 13, 2007 Duties of Elected Officials Subcommittee meeting
	Personnel Director.	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 Stepanich, 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 Illinois 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,	http://www.indygov.org/home.htm
City of	
Jacksonville,	http://www.coj.net/default.htm
City of	
Long Beach	http://municipalcodes.lexisnexis.com/codes/longbeach_charter/
City Charter	
Long Beach	http://municipalcodes.lexisnexis.com/codes/longbeach/
<i>Municipal Code</i>	
Long Beach	http://www.longbeach.gov/cd/redevelopment/default.asp
Redevelopment	
Agency	
Long Beach,	http://www.ci.long-beach.ca.us/
City of	
Los Angeles	http://www.amlegal.com/los_angeles_ca/
City Charter	
Los Angeles	http://www.crala.org
Community	
Redevelopment	
Agency	
Los Angeles	http://www.amlegal.com/los_angeles_ca/
<i>Municipal Code</i>	
Nashville-	http://www.municode.com/resources/gateway.asp?pid=14214&sid=42
Davidson City	
Charter	
New Orleans	http://www.cityofno.com/portal.aspx?portal=1&tabid=9
City Charter	
New York	http://public.leginfo.state.ny.us/menusetf.cgi
Administrative	
Code	
New York City	http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf
Charter	
New York City	http://www.nycouncil.info/
Council	
Oakland City	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/_DATA/CHARTER/index.html
Charter	
Oakland	http://www.business2oakland.com/main/redevelopment.htm
Community	
and Economic	
Development	
Agency	
Oakland	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/maintoc.htm
<i>Municipal Code</i>	
Oakland, City	http://www.oaklandnet.com/
of	
Philadelphia	http://www.amlegal.com/library/pa/philadelphia.shtml
City Charter	
Philadelphia	http://www.amlegal.com/library/pa/philadelphia.shtml
City Code	
Philadelphia	http://www.phila.gov/citycouncil/
City Council	
Philadelphia	http://www.phila.gov/mayor/
Mayor's Office	

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

Redevelopment
Agency

San Jose, City <http://www.sanjoseca.gov/>

of

Santa Ana, <http://www.ci.santa-ana.ca.us/>

City of

Stockton City <http://www.stocktongov.com/clerk/pages/Charter/index.cfm>

Charter

Stockton <http://www.stocktongov.com/SMC/Chapter01/ChapterIndex.cfm>

Municipal Code

Stockton, City <http://www.stocktongov.com/>

of

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~~ This Article shall remain in effect for a period of five years ~~(until December 31, 2010),~~ 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 7169.

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.