



OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: January 11, 2008

IBA Report Number: 08-6

City Council Date: January 15, 2008

Item Number: 330

Amendment to the Municipal Code Regarding Composition of the DPWG

OVERVIEW

In response to a suggestion from the City's Independent Consultant to augment a Kroll Report recommendation to modify the composition of the Disclosure Practices Working Group (DPWG), the City Council voted on April 30, 2007 to direct the City Attorney to prepare an ordinance amending the Municipal Code to facilitate the recommended changes to DPWG. The proposed ordinance primarily changes DPWG provisions of the Municipal Code regarding composition of the working group. This report describes the recommended membership changes and highlights other aspects of the DPWG noted within the Municipal Code.

*"As reconstituted, with the DPWG reporting to the City's new Audit Committee, as we also recommend, the DPWG can render meaningful assistance to the City (and particularly to the Mayor and CFO) in discharging their obligations to consider the materiality of information and to determine the City's disclosure responsibilities, consistent with best practices observed in the private sector."
- Kroll Report*

FISCAL/POLICY DISCUSSION

Recommended Change in the Composition of DPWG

The Kroll Report issued on August 8, 2006 recommended continuation of the DPWG, but recommended a change in its composition. Citing the "enormous responsibility of the



CFO to ensure the accuracy of the City's financial statements", Kroll recommended that the CFO be a member of the DPWG (the CFO was already participating in place of a Deputy City Manager of Financial Management) and serve as its chair. The Municipal Code currently indicates that the City Attorney serve as chair of the DPWG.

Given concerns over who might control DPWG as chair, the Mayor, City Attorney and Independent Consultant Stan Keller discussed alternatives to best fit the City's successful working group model and still satisfy the intention behind Kroll's recommendation. In a memorandum to the City dated April 20, 2007, the Independent Consultant recommended a new composition for the DPWG. The Independent Consultant recommended that the Deputy City Attorney for Finance and Disclosure (currently Mark Blake) serve as the Disclosure Coordinator with defined administrative responsibilities similar to those of a chair. A key component of the Independent Consultant's recommendation was that every member or ex-officio participant of the DPWG has the ability to place items on the agenda. The proposed changes to the composition of the DPWG are provided below:

Current DPWG Composition

City Attorney
Deputy City Attorney - Finance and Disclosure
Deputy City Manager -- Financial Management
City Treasurer
City Auditor and Comptroller
City's Outside Disclosure Counsel (voting)
Deputy City Attorney – MC 22.0303
Deputy City Attorney – MC 22.0304

Proposed DPWG Composition

City Attorney
DCA – Finance and Disclosure
Chief Financial Officer
Debt Management Director
City Auditor (Internal Auditor)

City Disclosure Counsel (ex officio)
Independent Budget Analyst (ex officio)

In discussing the Independent Consultant's recommendation, it was noted that the DPWG was a collaborative, consensus-based group that had been working well. The Independent Consultant suggested that the City strive to maintain a collaborative process and focus on the effectiveness of the DPWG in addressing the City's disclosure requirements. Last spring, the CFO, City Attorney and IBA all agreed to the changes proposed by the Independent Consultant. The proposed ordinance before the City Council incorporates these changes.

Council President Peters asked the Independent Consultant, charged with monitoring the City's fiscal reform for the SEC, if the proposed deviation from the specific Kroll recommendation would satisfy the SEC. The Independent Consultant responded that he strongly believed his recommendation would satisfy SEC expectations. Additionally, the Independent Consultant indicated that "the fair way to approach the Kroll recommendations is to look at the substance of what they are recommending, and then make sure that it works in this environment and for this City."

Other Notable DPWG Provisions in the Municipal Code

- The Purpose and Intent of the DPWG is to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City or by its related entities. The IBA notes that the DPWG focuses on securities disclosure and does not necessarily review other aspects of a proposed debt issuance (debt structure, marketing approach, pricing, etc.). The Debt Management Department, working with hired financial consultants, develops recommendations for City Council consideration in this regard, excluding securities issued by the Housing Authority and Redevelopment Agency. The Deputy City Attorneys for Finance and Disclosure can also be a resource for the City Council for other aspects of proposed debt.
- The DPWG shall meet as often as necessary to fulfill its obligations, but not less than once a month. A schedule was recently adopted by the DPWG establishing the first and third Wednesday of every month for meetings, with additional scheduling flexibility if needed. DPWG Rules and Regulations allow members and participants to assign appropriate designees to the meetings on their behalf on a limited basis. The Independent Consultant, or his designee, has participated in recent DPWG meetings.
- The DPWG shall conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, the DPWG shall submit a written Annual Report on the Group's work and findings to the City Council and to the Audit Committee on or before December 15th of each year. The 2007 Annual Report of the DPWG (the 3rd Report since DPWG inception) was distributed on December 15, 2007 and is anticipated to be presented to the Audit Committee on January 28, 2008. The Mayor and City Auditor are required to a) certify in writing to the City Council within 14 calendar days that they have reviewed the Annual Report and b) provide the City Council with any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.
- In connections with the approval of offering documents for securities by the City Council, the Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. This certification requirement is meant to apply to public securities offerings excluding securities issued by the Housing Authority and Redevelopment Agency.

CONCLUSION

The proposed ordinance before the City Council modifies DPWG provisions in the Municipal Code to incorporate recommendations from the City's Independent Consultant. Although this proposal modifies a Kroll recommendation, the Independent Consultant has assured the City Council that it fulfills the intent of the Kroll recommendation and will satisfy the SEC. Last spring, the Mayor, City Attorney and IBA expressed support for the proposal that calls for the Deputy City Attorney for Finance and Disclosure to serve as Disclosure Coordinator rather than the CFO. The proposed ordinance incorporates the recommendation and direction from the City Council on April 30, 2007.

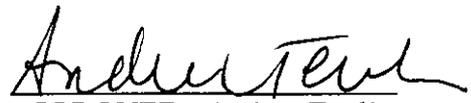
"The DPWG issued its first annual report addressing the City's disclosure practices and controls on November 1, 2005. We endorse the continuation of the DPWG, and recommend that it report to the new Audit Committee."
– Kroll Report

However, while contrary to both Kroll and the Independent Consultant's recommendation and Council's previous action, in our March 1, 2007 (IBA #07-27) report, we recommended that the City Auditor serve as an ex officio member of DPWG as opposed to a voting member. Professional audit organizations consistently concur that auditors should not function in the role of a manager including making management decisions or performing management functions.

This report also highlights key DPWG provisions from the Municipal Code related to its purpose, meetings, annual reporting and certifications. In particular, the IBA believes that the Annual Report is a useful document for apprising the City Council of DPWG activities over the past calendar year and issues/initiatives to be addressed going forward. The Annual Report will be presented and discussed at the Audit Committee meeting on January 28, 2008. The IBA supports the proposed ordinance and the continuation of a collaborative DPWG as a means of ensuring City compliance with federal and state securities laws.



Jeff Kavar
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

000243

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE OF) 330
1/15
3. DATE:
December 18, 2007

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY

4. SUBJECT:
AMENDMENT TO MUNICIPAL CODE REGARDING COMPOSITION OF THE DPWG

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Mark Blake - 533-5618 MS 59

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Jessie Fernandez - 533-5874 MS59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	KAREN BENMANN, ASSISTANT CITY ATTORNEY		8	DEPUTY CHIEF		
2	EDCP	MARILYN GURKE		9	COO		
3	EAS			10	CITY ATTORNEY	MARK D. BLAKE	
4	LIAISON OFFICE			11	ORIG. DEPT		
5	AUDITOR			DOCKET COORD: _____ COUNCIL LIAISON _____			
6	FM			✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7					REFER TO: _____ COUNCIL DATE: _____		

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Ordinance amending the Municipal Code pursuant to the recommendations of the Kroll Report and the Independent Consultant.

11A. STAFF RECOMMENDATIONS:
APPROVE THE ORDINANCE

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3)

HOUSING IMPACT:

OTHER ISSUES:

EXECUTIVE SUMMARY SHEET

DATE ISSUED: December 18, 2007

REPORT NO.:

ATTENTION:

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Disclosure Practices Working Group

COUNCIL DISTRICT(S):

CONTACT/PHONE NUMBER: Mark D. Blake- 533-5618

REQUESTED ACTION: Approve the Ordinance approving changes in the Composition of the Disclosure Practices Working Group.

STAFF RECOMMENDATION:

Approve the Ordinance

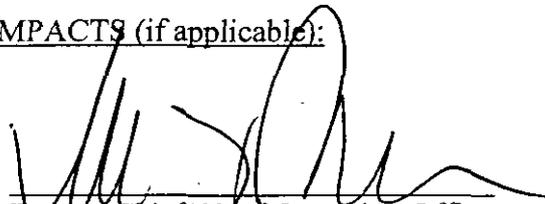
EXECUTIVE SUMMARY: On August 8, 2006, Kroll Inc. [Kroll] delivered its Report entitled Report of the Audit Committee of the City of San Diego. Among the recommendations contained in the Report, Kroll recommended that the City amend the municipal code to change the composition of the Disclosure Practices Working Group. On April 30, 2007 the City Council voted to direct the City Attorney to prepare an ordinance in accordance with those recommendations. The Ordinance has been reviewed by the City's Independent Consultant.

FISCAL CONSIDERATIONS:PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On April 30, 2007, the Council voted to direct the City Attorney to prepare the Ordinance.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):


Originating Department


Deputy Chief/Chief Operating Officer

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL
CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION
41, SECTION 22.4101 ET. SEQ. RELATING TO
ORGANIZATION OF THE DISCLOSURE PRACTICES
WORKING GROUP

WHEREAS, on April 30, 2007 the Council of the City of San Diego approved changes in the composition of the Disclosure Practices Working Group [DPWG] and directing the City Attorney to prepare an ordinance amending the Municipal Code in accordance with the changes approved by the Council; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 41, Sections 22.4101 through 22.4112 are amended to read as follows:

Article 2: Administrative Code

Division 7: Securities Disclosure

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) The City hereby establishes a Disclosure Practices Working Group, consisting solely of City officials with the assistance and advice of the City's disclosure counsel, which shall have the responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City or by its related entities. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the California Brown Act.
- (b) The Disclosure Practices Working Group shall:
 - (1) design and implement the City's disclosure controls and procedures;

- (2) review the City's disclosures in connection with its securities and those of its related entities;
- (3) ensure the City's compliance with federal and state securities laws;
- (4) ensure that City staff receive appropriate training regarding such controls and procedures including training regarding the requirements of federal securities laws;
- (5) critically review and evaluate the disclosure controls and procedures, and compliance therewith, on an annual basis;
- (6) make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the Mayor, the City Council and the Audit Committee; and
- (7) ensure that the City Council, City officers, and staff comply with the federal securities laws in connection with disclosures provided by the City relating to securities issued by the City and securities issued by *related entities*.

§ 22.4102 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definition(s) shall apply:

Related entities mean those independent agencies, joint power authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity, or for which the City has agreed to provide disclosure. *Related entities* include but are not limited to the Public Facilities Financing Authority of the City of San Diego, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/MTDB Authority, the City of San Diego Tobacco Settlement Revenue Funding Corporation, the Convention Center Expansion Financing Authority, the Redevelopment Agency of the City of San Diego, the San Diego Open Space Park Facilities District No. 1, the reassessment districts, and community facilities districts created by the City. The Controls and Procedures shall include a current list of *related entities*.

§ 22.4103 Organization of the Disclosure Practices Working Group

- (a) The Disclosure Practices Working Group shall consist of the following or, from time to time, their respective designees (as permitted by the Disclosure Controls and Procedures):

- (1) the Chief Financial Officer;
 - (2) the City Director of Debt Management;
 - (3) the City auditor (or other person designated to fulfill that responsibility);
 - (4) the City Attorney;
 - (5) the Deputy City Attorney for Finance and Disclosure, who shall serve as Disclosure Coordinator of the Disclosure Practices Working Group, with responsibility for its operation, including arranging meetings, maintaining the agenda and arranging for information to be provided to members and participants; and
 - (6) the City's outside disclosure counsel, who shall be a non-voting member.
- (b) The Independent Budget Analyst or, from time to time, that official's designee, shall be an ex officio participant of the Disclosure Practices Working Group.

§ 22.4104 Meetings

- (a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.
- (b) Any member or ex officio participant may place an item on the agenda of the Disclosure Practices Working Group.
- (c) Each member and ex officio participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.

§ 22.4105 Design and Implementation of Disclosure Controls and Procedures

- (a) The Disclosure Practices Working Group shall from time to time review the City's disclosure practices and procedures and shall recommend to the Mayor and the City Council such new disclosure controls and procedures as shall be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:

- (1) that information material to the City's proposed and outstanding securities is compiled and communicated to senior City officials, including the Mayor, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
 - (2) that such information is prepared in a timely manner to enable such senior City officials to certify the accuracy of disclosures made in connection with City financings;
 - (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
 - (4) the preservation of an audit trail regarding information prepared and reviewed in connection with such disclosures.
- (b) Such disclosure controls and procedures shall address the accurate and timely disclosure of information provided by the City in connection with securities issued by the City and by the *related entities*, and shall include those procedures established by the Audit Committee for employees and officials to submit complaints or concerns to the Audit Committee confidentially and anonymously.
- (c) The Mayor shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures together with any recommendations of the Audit Committee, as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the Mayor to determine whether such report of the Mayor is reasonable and carries out the program of this chapter.

§ 22.4106 Annual Evaluation and Report

- (a) Each year, the Disclosure Practices Working Group shall conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, the Disclosure Practices Working Group shall:
- (1) meet with key managers and staff of the Mayor's Office (particularly those managers and key staff responsible for the financial management of the City), the Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;

- (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
 - (3) submit a written Annual Report on the Group's work and findings to the City Council and to the Audit Committee on or before December 15 of each year.
- (b) The Mayor and the City Auditor shall:
- (1) review the Annual Report required by subsection (a)(3);
 - (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,
 - (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ 22.4107 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:
- (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with Nationally Recognized Municipal Securities Information Repositories, press releases, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
 - (2) providing for the timely review of all disclosure materials requiring approval and certification by the Mayor, Chief Financial Officer and City Attorney.
- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring

approval and certification by the Mayor, Chief Financial Officer and City Attorney.

§ 22.4108 Promote Compliance with Securities Laws

- (a) The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the Mayor and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.
- (b) Members of the Disclosure Practices Working Group shall meet periodically as needed with the Audit Committee, but not less than once annually.

§ 22.4109 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the Mayor regarding their obligations relating to disclosure matters under federal and state securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.
- (b) The Mayor, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

Such training shall include information on how to submit complaints or concerns to the Audit Committee in a confidential and anonymous manner.

§ 22.4110 Requests of the Disclosure Practices Working Group

Officers and employees of the City and its component units and members of the Board of Administration, officers, and employees of the San Diego City Employees' Retirement System shall promptly provide such information, assurances, and/or certifications including appearing before the Disclosure Practices Working Group to answer questions as the Disclosure Practices Working Group may, at its sole discretion, request in order to assure compliance with federal and state securities laws.

§ 22.4111 Certifications by City Officials to the City Council

- (a) In connection with the approval of offering documents for securities by the City Council, the Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such

documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the Mayor or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.

- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the CAFR in the disclosure documents of the City or the *related entities*, the Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

§ 22.4112 Selection of Independent Auditors

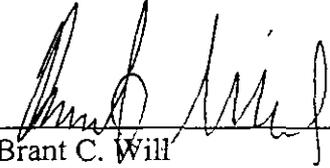
In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the Mayor and the Audit Committee shall consult with the Disclosure Practices Working Group regarding its recommendations relating to appropriate expertise, experience, responsibility, and other factors on which candidates will be evaluated by the Audit Committee.

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

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

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Brant C. Will
Deputy City Attorney

BCW:jdf
12/18/2008
Or.Dept:City Attorney
O-2008-84

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Strikethrough [Deleted]

Underline [New]

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) ~~The Chief Financial Officer, The City Attorney and the City internal auditor are hereby directed to~~ establishes a Disclosure Practices Working Group, consisting solely of City officials with the assistance and advice of the City's disclosure counsel, which shall have the responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance ~~of~~ by the City (and including the City Council, City officers, and staff) in the exercise of their official duties with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City or by its related entities. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the California Brown Act.
- (b) ~~The responsibilities of the Disclosure Practices Working Group shall be:~~
- (1) ~~to~~ design and implement the City's disclosure controls and procedures;
 - (2) ~~to~~ review the City's disclosures in connection with its securities and those of its related entities;
 - (3) ~~to~~ ensure the City's compliance with federal and state securities laws;
 - (4) ~~to~~ ensure that City staff receive appropriate training regarding such controls and procedures; including training regarding the requirements of federal securities laws;
 - (5) ~~to~~ critically review and evaluate the disclosure controls and procedures, and compliance therewith on an annual basis;
 - (6) ~~to~~ make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the Mayor, the City Council and the Audit Committee; and
 - (7) ~~to~~ ensure that the City Council, City officers, and staff comply with the federal securities laws ~~in the exercise of their official duties~~ in connection with disclosures provided by the City relating to securities issued by the City and securities issued by *its related entities*.

Strikethrough [Deleted]

Underline [New]

§ 22.4102 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definition(s) shall apply:

Related entities mean those independent agencies, joint power authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity, or for which the City has agreed to provide disclosure. *Related entities* include but are not limited to the Public Facilities Financing Authority of the City of San Diego, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/MTDB Authority, the City of San Diego Tobacco Settlement Revenue Funding Corporation, the Convention Center Expansion Financing Authority, the Redevelopment Agency of the City of San Diego, the San Diego Open Space Park Facilities District No. 1, the reassessment districts, and community facilities districts created by the City. The Controls and Procedures shall include a current list of related entities.

§ 22.4103 Organization of the Disclosure Practices Working Group

- (a) The Disclosure Practices Working Group shall consist of the following or, from time to time, their respective designees (as permitted by the Disclosure Controls and Procedures:
- (1) the Chief Financial Officer;
 - (2) the City Director of Debt Management;
 - (3) the City ~~internal~~ auditor (or other person designated ~~by the City Auditor and Comptroller Mayor~~ to fulfilling that responsibility);
 - (4) the City Attorney;
 - (5) the Deputy City Attorney for Finance and Disclosure, who shall serve as Disclosure Coordinator of the Disclosure Practices Working Group, with responsibility for its operation, including arranging meetings, maintaining the agenda and arranging for information to be provided to members and participants; and
 - (6) the City's outside disclosure counsel, who shall be a non-voting member.
- (b) The Independent Budget Analyst or, from time to time, that official's designee, shall be an ex officio participant of the Disclosure Practices Working Group.

§ 22.4104 Meetings

- (a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.
- (b) Any member or ex officio participant may place an item on the agenda of the Disclosure Practices Working Group.
- (c) Each member and ex officio participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.

§ 22.4105 Design and Implementation of Disclosure Controls and Procedures

- (a) The Disclosure Practices Working Group shall ~~conduct a thorough~~ from time to time review the City's ~~current~~ disclosure practices and shall recommend to the Mayor and the City Council such new disclosure controls and procedures as shall be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:
 - (1) that information material to the City's proposed and outstanding securities is ~~accumulated~~ compiled and communicated to senior City officials, including the Mayor, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
 - (2) that such information is ~~recorded~~ prepared, processed, and summarized in a timely manner to enable ~~the requisite~~ such senior City officials to certify the accuracy of disclosures made in connection with City financings;
 - (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
 - (4) the preservation of an audit trail regarding information prepared and reviewed ~~or prepared~~ in connection with such disclosures.
- (b) Such disclosure controls and procedures shall address the accurate and timely disclosure of information provided by the City in connection with securities issued by the City and by the *related entities*, and shall include

those procedures established by the Audit Committee for employees and officials to submit complaints or concerns to the Audit Committee confidentially and anonymously.

- (c) The Mayor shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures together with any recommendations of the Audit Committee relating to disclosure controls and procedures as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the Mayor to determine whether such report of the Mayor is reasonable and carries out the program of this chapter.

§ 22.4106 Annual Evaluation and Report

- (a) ~~Each year, The Disclosure Practices Working Group shall, in collaboration with the Mayor and the City Chief Financial Officer,~~ conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, the Disclosure Practices Working Group shall:
- (1) meet with key managers and staff ~~in~~ of the Mayor's Office (particularly those managers and key staff responsible for the financial management of the City), the Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;
 - (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
 - (3) submit a written Annual Report on the ~~Committee's Group's~~ work and findings to the City Council and to the Audit Committee on or before ~~November~~ December 15 of each year.
- (b) The Mayor and the ~~Chief Financial Officer~~ City Auditor shall:
- (1) review the Annual Report required by subsection (a)(3);
 - (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,

- (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ 22.4107 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:
 - (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with Nationally Recognized Municipal Securities Information Repositories, press releases, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
 - (2) providing for the timely review of all disclosure materials requiring approval and certification by the Mayor, Chief Financial Officer and City Attorney.
- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or *staff are responsible for the form or content of such documents or materials*. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring approval and certification by the Mayor, Chief Financial Officer and City Attorney.

§ 22.4108 Promote Compliance with Securities Laws

- (a) The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the Mayor and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.
- (b) Members of the Disclosure Practices Working Group shall meet periodically as needed with the Audit Committee, but not less than once annually.

§ 22.4109 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the Mayor regarding their obligations relating to disclosure matters under federal and state securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.
- (b) The Mayor, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

Such training shall include information on how to submit complaints or concerns to the Audit Committee in a confidential and anonymous manner.

§ 22.4110 Requests of the Disclosure Practices Working Group

Officers and employees of the City and its component units and members of the Board of Administration, officers, and employees of the San Diego City Employees' Retirement System shall promptly provide such information, assurances, and/or certifications including appearing before the Disclosure Practices Working Group to answer questions as the Disclosure Practices Working Group may, at its sole discretion, request in order to assure compliance with federal and state securities laws.

§ 22.4111 Certifications by City Officials to the City Council

- (a) In connection with the approval of offering documents for securities by the City Council, the Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the Mayor or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.
- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the CAFR in the disclosure documents of the City or the *related entities*, the Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

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§ 22.4112 Selection of Independent Auditors

In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the Mayor and the Audit Committee shall consult with the Disclosure Practices Working Group regarding its recommendations relating to appropriate expertise, experience, responsibility, and other factors on which candidates will be evaluated by the Audit Committee.