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October 22, 2019

**REVISED REPORT TO THE PUBLIC SAFETY AND LIVABLE NEIGHBORHOODS
COMMITTEE RELATED TO AMENDMENTS TO THE SAN DIEGO CITY CHARTER
PROPOSED BY WOMEN OCCUPY SAN DIEGO**

INTRODUCTION

On September 18, 2019, the Public Safety and Livable Neighborhoods Committee (Committee) of the San Diego City Council (Council) voted unanimously to refer a proposed amendment to the San Diego City Charter (Charter) to our Office for legal review and drafting. This Report, which includes three attachments, responds to the Committee's request.

Attachment A is the proposal presented to the Council, in accordance with Council Policy 000-21, by Women Occupy San Diego (Women Occupy Proposal or Proposal). The Proposal relates to the dissolution of the existing Community Review Board on Police Practices (CRB), established by Charter section 43(d), and the creation, by Charter amendment, of a Commission on Police Practices (Commission). Under the Proposal, the Commission is intended to act independently of the Mayor and the San Diego Police Department (Police Department), with mandatory duties to investigate, review, and evaluate specified matters within the Police Department. The Proposal also calls for the Commission to have certain discretionary powers including subpoena authority and independent legal counsel.

Attachment B is the draft prepared by this Office, as requested by the Committee. The proposed draft includes the modifications to the Proposal made in the Committee's September 18, 2019 motion. The Committee also requested that this Office draft "legally appropriate language" and provide additional legal review and analysis on certain aspects of the Proposal.

As explained in this Report and the attached chart at Attachment C, we made both non-substantive and substantive modifications to the Women Occupy Proposal, which are consistent with the intent of the Proposal.

The non-substantive edits are intended to clarify provisions and conform to the style and format of the Charter. The substantive edits are intended to reconcile potential conflicts between the Proposal and existing Charter language related to the City's budgetary process and the authority of the Chief of Police, while respecting the intent of the Proposal. Also, we added more detailed provisions related to the hiring of Commission staff, enforcement of subpoenas, and handling of Commission records. Finally, we added and modified provisions necessary to conform to state laws that give certain rights to peace officers in the disciplinary process and laws related to peace officer personnel records.

We note that a Charter amendment may be “proposed by initiative or by the governing body.” Cal. Const. art. XI, § 3(b). *See also* San Diego Charter § 23 (stating Charter amendment measures are governed by California law); Cal. Elec. Code § 9255. The Women Occupy Proposal is presented as a Charter amendment proposed “by the governing body,” not through the people’s initiative process. Therefore, the Council controls the language of the proposed measure and makes the determinations related to the substance of the measure.

Further, as we discuss more fully below, if the Council wishes to place this proposed Charter amendment before voters, the Council must comply with the Meyers-Milias-Brown Act (MMBA), California’s collective bargaining law set forth at California Government Code (Government Code) sections 3500 through 3511, which is binding on the City. Throughout the collective bargaining process with the City’s impacted employee organizations, the Council has authority and discretion to modify the language presented in the Proposal. If the Proposal is advanced by the Committee to the Council and then to collective bargaining, we recommend ongoing legal review to ensure that any future modifications to the Proposal conform to applicable law.

DISCUSSION

I. NON-SUBSTANTIVE MODIFICATIONS

We made non-substantive changes to the Proposal, related to placement, organization, and ordering of provisions. The Proposal called for amendment of Charter section 41; addition of a new section 41.2; and a split of the new provisions related to the Commission between these two sections. We placed the substantive provisions related to the Commission in a new section 41.2, with minimal amendments to section 41 to recognize that the Commission is distinct from the City’s other commissions whose members are appointed by the Mayor. These modifications are intended to better conform to the format of the Charter and to assist the reader in understanding the provisions.

We also reordered provisions within the proposed section 41.2 as follows:

Paragraph 1 (P-1) ¹ of Draft Section 41.2:	Establishment of the Commission
Paragraph 2 (P-2) of Draft Section 41.2:	Independence of the Commission
Paragraph 3 (P-3) of Draft Section 41.2:	General Description of Duties and Powers, Discussion of Implementing Ordinance
Paragraph 4 (P-4) of Draft Section 41.2:	Appointment and Removal of Commission Members
Paragraph 5 (P-5) of Draft Section 41.2:	Interim Commission Members

¹ Paragraph numbering in our proposed draft is for discussion purposes only and would be removed in final ballot language.

Paragraph 6 (P-6) of Draft Section 41.2:	Executive Director, Staff, Independent Legal Counsel
Paragraph 7 (P-7) of Draft Section 41.2:	Commission Records, Custodian of Records
Paragraph 8 (P-8) of Draft Section 41.2:	Subpoena Power
Paragraphs 9-15 (P-9) - (P-15) of Draft Section 41.2:	Detailed Description of Mandatory Duties and Discretionary Powers
Paragraph 16 (P-16) of Draft Section 41.2:	Commission Interaction with Chief of Police

In addition, the Proposal describes certain mandatory duties and discretionary powers of the Commission. The distinction between these duties is important because it impacts the Commission’s workload and budgetary needs. The performance of mandatory duties that the law requires from a public office, or in this case the Commission, may be compelled through legal action, specifically through a writ of mandamus. *See, e.g., Brandt v. Board of Supervisors*, 84 Cal. App. 3d 598, 600 (1978). Discretionary powers, on the other hand, cannot be compelled by a court, as a general rule.

Without modifying the substance of the Proposal, we reorganized and redrafted the provisions covering the mandatory duties and discretionary powers, merging them into related topics or subjects, and then using the mandatory verb “must” and the discretionary verb “may” to distinguish between the proposed Commission’s mandatory duties and its discretionary authority. (*See* P-9 through P-15.)²

Finally, we made non-substantive stylistic and grammatical edits. For example, in drafting Charter provisions, we do not use numbers or letters within sections of the Charter unless we are separating unrelated provisions. Therefore, we removed internal numbers and letters except where necessary.

II. SUBSTANTIVE MODIFICATIONS: HARMONIZING THE WOMEN OCCUPY PROPOSAL WITH EXISTING CHARTER PROVISIONS

A. General Legal Principles

When interpreting Charter provisions, a reviewing court will harmonize provisions relating to the same subject matter to give effect to all language, to the extent possible. *Don’t Cell Our Parks v. City of San Diego*, 21 Cal. App. 5th 338, 349–50 (2018). Therefore, in drafting Charter language, it is appropriate to consider other Charter provisions that may be in conflict with the proposed new language. Where there are clear conflicts between the Proposal and

² With respect to the mandatory duties, in some instances, the Proposal uses the phrase “review,” which we interpreted to mean “review and evaluate” consistent with the current duties of the CRB under Charter section 43(d). We added the words “and evaluate” in these instances. If that was not the intent, those words can be removed.

existing Charter provisions, we proposed modifications to ensure consistency as described below.

B. Authority of Chief of Police

We have identified a potential conflict between language in the Proposal and Charter section 57, which sets forth the staffing composition of the Police Department and establishes the authority of the Chief of Police. This section states, in part:

The Chief of Police, with the approval of the [Mayor], shall appoint, direct and supervise the personnel, subject to Civil Service regulation . . . and exercise all powers and duties provided by general laws or by ordinance of the Council. The Chief of Police shall have all power and authority necessary for the operation and control of the Police Department.

San Diego Charter § 57.

The Chief of Police is authorized to hire and discipline subordinate staff, subject to the City's Civil Service rules, as set forth in article VIII of the Charter, and related ordinances, codified at San Diego Municipal Code, at Chapter 2, Article 3, Divisions 1 through 18. *See* San Diego Charter § 57.

To ensure consistency with existing Charter provisions, we added language to the Proposal that recognizes the role of the Chief of Police. (*See* P-16.) In the alternative, the Committee (or Council) may recommend modifications to the duties of the Chief of Police, as set forth in Charter section 57.

C. Budget and Appropriations Timelines

The Charter sets forth a detailed City budget and appropriations process and timeline in multiple sections, including Charter sections 11.1, 69, 72, 73, 275, and 295, among others. Under the City's current budgetary process, the Mayor proposes the budget for determination by the Council. San Diego Charter § 69. The annual budget document must include the City's projected revenues and expenditures. *Id.* In addition, the Council has nondelegable legislative authority to adopt any ordinance or resolution to spend public money, "including the City's annual budget ordinance or any part thereof." San Diego Charter § 11.1.

The Council also controls the "terms and conditions under which the Mayor must propose mid-year amendments to the annual budget." San Diego Charter § 72. Upon the Mayor's written recommendation, the Council may approve certain transfers of the unencumbered balance of previously approved appropriations, with express limitations set forth in the Charter. San Diego Charter § 73 (*e.g.*, the Council has no authority to transfer any part of the "salary account" during the fiscal year for another purpose, unless there is a public emergency and the transfer is needed to ensure the safety and property of the inhabitants of the City).

At the direction of the Committee, we removed all language related to the Commission's budget. If the Commission is created by City voters, the Council will need to fund it, and the Council can make appropriate budgetary determinations related to funding at that time.

III. SUBSTANTIVE MODIFICATIONS: HARMONIZING THE WOMEN OCCUPY PROPOSAL WITH CALIFORNIA LAW.

The Committee must be aware of certain provisions of state law applicable to the Proposal.

A. Public Safety Officers Procedural Bill of Rights

The California Public Safety Officers Procedural Bill of Rights Act (POBRA), at California Government Code (Government Code) sections 3300 through 3313, is binding on the City. *Baggett v. Gates*, 32 Cal. 3d 128, 140 (1982). These provisions codify “basic rights and protections which must be afforded all peace officers . . . by the public entities that employ them.” *Bacilio v. City of Los Angeles*, 28 Cal. App. 5th 717, 723 (2018). POBRA requires public agencies to “afford minimum procedural rights to their peace officer employees.” *Pasadena Police Officers Ass’n. v. City of Pasadena*, 51 Cal. 3d 564, 572 (1990).

POBRA's purpose is “to assure the maintenance of stable employer-employee relations, and thus to secure effective law enforcement . . . services for all people of the state.” *White v. County of Sacramento*, 31 Cal. 3d 676, 683 (1982) (citing Cal. Gov't Code §3301) (internal quotations deleted). “The various procedural protections provided by POBRA balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment.” *Daugherty v. City & Cty. of San Francisco*, 24 Cal. App. 5th 928, 947 (2018) (internal quotations and citations omitted).

POBRA covers interrogation of police officers, removal of officers and other disciplinary actions, personnel records, and due process protections, among other matters. One key protection is set forth at Government Code section 3304, which provides for “a speedy adjudication of conduct that could result in discipline.” *Id.* (internal quotations and citation omitted). Unless an express exception applies, the City must notify an officer of proposed discipline within one year of the City's discovery. Cal. Gov't Code §3304 (d)(1).³

³ There are tolling provisions that cover certain circumstances, including when the allegations against an officer are the subject of a criminal investigation or prosecution; multiple employees are involved and the investigation requires a reasonable extension; the subject employee is incapacitated or unavailable; there is civil litigation pending and the subject officer is named as a defendant; and the subject officer waives the one-year time period in writing. Cal. Gov't Code § 3304(d)(2). Notably, a Commission review or investigation is not expressly within the specified circumstances that would toll the limitations period.

The language in the Proposal at section 41.2, paragraphs (2)(C) and (2)(D), mandating that the Commission review and evaluate Police Department findings and proposed discipline decisions before the Chief of Police or designee provides notice to a subject officer of the discipline may create timing problems for the Police Department. It may also infringe upon the authority of the Chief of Police to discipline Police Department employees as described in Charter section 57. We added the following language to the Proposal to reconcile these provisions:

The Chief of Police must consider the Commission's evaluation of proposed police officer discipline, prior to imposition of the discipline, to the extent permitted within applicable federal and state law, and only if completed within the statutory timelines set forth in the California Public Safety Officers Procedural Bill of Rights or subsequent, applicable state laws. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department, in accordance with Section 57 of this Charter. (See P-16.)

Further, Government Code section 3303 mandates protections that apply when a peace officer is interrogated in the course of certain administrative investigations. *Pasadena Police Officers Ass'n.*, 51 Cal. 3d at 574; Cal. Gov't Code § 3303. We believe these protections would apply to the Commission because it has the power to recommend discipline to the Police Chief. *See Caloca v. County of San Diego*, 72 Cal. App. 4th 1209, 1223 (1999) (finding that the County of San Diego's Citizens Law Enforcement Review Board's recommendations are within the definition of punitive action under POBRA).

The proposed Commission has subpoena power, presumably to compel peace officers and other City employees to appear before the Commission. As a general rule, "a public employee has no absolute right to refuse to answer potentially incriminating questions posed by his employer. Instead, his self-incrimination rights are deemed adequately protected by precluding any use of his statements at a subsequent criminal proceeding." *Lybarger v. City of Los Angeles*, 40 Cal. 3d 822, 827 (1985).

We included language in the draft proposal that recognizes these applicable state law provisions. (See P-3, P-8, P-9, and P-16.). However, if the Proposal moves forward, into meet and confer, we will need to further analyze Government Code section 3303 as it may relate to the Commission's work.

B. Commission Records

In addition to POBRA, California Penal Code section 832.7 deems certain peace officer personnel records are confidential, not subject to public disclosure, and only subject to disclosure in criminal and civil procedures in accordance with California Evidence Code sections 1045 through 1047, which is the codification of the holding in *Pitchess v. Superior Court*, 11 Cal. 3d 531 (1974). Other records must be disclosed. To address this, we added language stating that the Executive Director of the Commission serves as the custodian of the Commission's records and

must ensure compliance with federal and state laws related to records retention, preservation, confidentiality, privilege, and disclosure. (*See* P-7.)

Further, the Commission would need to rely on legal advice of its independent counsel regarding litigation on records issues related to the Commission’s work.

C. Detailed Procedures Related to Subpoena Power

We have proposed procedural details to assist in implementation of the Proposal. The Proposal does not address enforcement of subpoena power. We recommend the addition of the following language, incorporating applicable state law including the Ralph M. Brown Act, which, among other things, governs action by Charter-created advisory bodies. “The Commission may enforce its administrative subpoenas by initiating contempt procedures, upon a majority vote of the Commission and in the manner provided by applicable state law.” (*See* P-8.)

IV. MISCELLANEOUS ISSUES

A. Severability and Competing Measures

We removed the Women Occupy Proposal provisions related to severability and concurrent ballot measures.

In the Women Occupy Proposal, the severability language is not part of the codified Charter language. As an alternative to uncodified severability language, we instead added “savings” clauses throughout Attachment B, stating that provisions are subject to applicable federal and state law. (*See* P-3, P-7, P-8, P-9, P-13, and P-16.) This is consistent with other City ballot measures, which have traditionally not contained severability clauses.⁴

In addition, the California Constitution states, in pertinent part: “If provisions of two or more measures approved at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail.” Cal. Const. art. II, § 10(b). *See also Taxpayers to Limit Campaign Spending v. FPCC*, 51 Cal. 3d 744 (1990).⁵ Therefore, we removed the unconstitutional language from the Proposal, stating that a concurrently adopted measure “would be rendered moot and not go into effect.”

⁴ We note that severability is a matter of state law. *National Ass'n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1122 (9th Cir. 2019). And generally, California courts will sever provisions in a measure only where a law’s invalid provisions are “grammatically, functionally and volitionally separable from the valid provisions.” *National R.R. Passenger Corp. v. Su*, 289 F. Supp. 3d 1130, 1139 (E.D. Cal. 2017). In our view, our reference to applicable federal and state laws in the codified language is a clear way to express to a reviewing court that the intent of the Proposal is to harmonize the Commission’s activities with governing federal and state law.

⁵ City charter amendments are governed by state law. *See* Cal. Const. art. XI, § 3(b); San Diego Charter § 23; Cal. Elec. Code § 9255.

Finally, to conform to state elections law, we removed the proposed language at section 41.2, subsection (7), which states: “Any provisions of the San Diego City Charter in conflict with this amendment are hereby amended to conform to the terms of this amendment.” This language is inconsistent with legal requirements. The law requires that Charter amendments be expressly presented to voters.

B. Mandating Future Legislative Action

The Proposal at section 41.2, subsection (9) states: “Within 120 days of this amendment’s adoption, the San Diego City Council must repeal those ordinances or parts of ordinances pertaining to the Community Review Board on Police Practices.” This direction to the Council, set forth in the Charter, is unnecessary. Any ordinance that conflicts with the Charter is void. The Council can repeal outdated language in the San Diego Municipal Code. Therefore, we removed this directive.

The Proposal also directs that the Council enact an ordinance within 120 days of the Charter amendment’s effective date, implementing certain provisions of the Proposal. These substantive provisions are addressed elsewhere in our draft proposal. An implementing ordinance is not necessary for these provisions to take effect, so we removed the reference to the 120-day timeline. Further, any implementing ordinance that covers mandatory subjects of bargaining will require meet and confer, which we discuss in greater detail below.

C. Contracting and Employment Considerations

Charter section 94 sets forth provisions related to public contracts, including the requirement to competitively bid contracts for the hiring of consultants, “pursuant to rules established by ordinance of the City Council.” San Diego Charter § 94. The employment of the Commission’s legal counsel, if a contract attorney is used, and additional outside consultants will be subject to this Charter provision. Therefore, we added language to recognize the City’s contracting rules.

We also added additional detail to cover employment-related rules for the Executive Director and Commission staff. Generally, an employee’s “appointing authority” is responsible for all decisions related to appointment, compensation, performance evaluation, and termination, if needed. Here, the Proposal contemplates a split of employment-related duties for the Executive Director; the Council appoints the Executive Director, but the Commission supervises and can terminate that position with or without cause. The Commission, which is proposed to be a City commission, must act in accordance with the City’s employment-related rules, including ensuring that the Executive Director’s compensation is within the parameters established by the Council in adopting the annual salary ordinance. (*See P-6.*)

D. Undefined Terms

There are certain terms in the Proposal that are not defined. The Committee (or Council) may want to address these undefined terms either in the draft or through an implementing ordinance. As an example, “complaint” and “written complaint” are not defined terms, and it is not clear whether the Commission will have a separate complaint process or whether making a “complaint” refers to the existing complaint process within the Police Department. The complaint process could be established later by Council or by authorizing the Commission to establish its own procedures.

The term “misconduct” is also not defined. The Council should consider whether this term should be defined in the Charter or through an ordinance of the Council, or whether the Council wishes to rely on the common definition of the term or any definition set forth in state law.

V. COMPLIANCE WITH STATE COLLECTIVE BARGAINING LAWS

In 2018, Women Occupy San Diego presented a substantially similar proposal to the City for consideration of placement on the November 2018 ballot. Verbally, during Committee in April 2018, and again by memorandum dated July 19, 2018 (City Att’y MS 2018-10 (July 19, 2018)), this Office advised on the collective bargaining requirements under the Meyers-Milias-Brown Act (MMBA) related to the Women Occupy Proposal.

To summarize that memorandum, the Council is required to meet and confer on mandatory subjects of bargaining, defined by state law as “wages, hours, and other terms and conditions of employment” with any of its recognized employee organizations impacted by the Women Occupy Proposal before the Council makes a determination to place the proposed Charter amendment on a future ballot. Cal. Gov’t Code § 3505; *People ex rel. Seal Beach Police Officers Ass’n. v. City of Seal Beach*, 36 Cal. 3d 591, 602 (1984); *Boling v. Public Employment Relations Bd.*, 5 Cal. 5th 898, 918 (2018). These negotiations are referred to as “Seal Beach negotiations” after the seminal *City of Seal Beach* case cited above. See *City and County of San Francisco*, PERB Dec. No. 2536-M (2017).

While the MMBA does not require labor negotiations on legal drafting, it requires discussion of substantive issues that impact mandatory subjects of bargaining. As one court has explained:

The Act imposes a duty on a public agency to “meet and confer in good faith” with a recognized union, “regarding wages, hours, and other terms and conditions of employment . . . prior to arriving at a determination of policy or course of action.” The duty to bargain applies to a decision “directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls.” The duty to bargain also applies to a fundamental management or policy decision if the decision directly affects employment and “the employer’s need for

unencumbered decision making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about” the decision. Thus, the duty to bargain extends to matters beyond what might typically be incorporated into a comprehensive MOU, including, as here, the implementation and effects of a decision to lay off employees.

San Diego Hous. Comm’n. v. Public Employment Relations Bd., 246 Cal. App. 4th 1, 8–9 (2016) (internal citations omitted).

To ensure compliance with the MMBA, we advise that the City give notice to all six of the City’s recognized employee organizations. If any recognized employee organization raises a subject it wants to discuss and the City disagrees on whether the subject is within the scope of bargaining, the City is still required to meet and seek clarification of the City’s bargaining obligation. *City of Palo Alto v. Public Employment Relations Bd.*, 5 Cal. App. 5th 1271, 1307 (2016). The California Public Employment Relations Board, which has initial jurisdiction to enforce the MMBA, has concluded:

[W]hen there is an ambiguous or vague proposal that may or may not come within the scope of representation, the objecting party must seek clarification of questionable proposals. Failure to seek clarification of questionable proposals is a violation of the duty to negotiate in good faith. Thus, . . . if a proposal is *arguably* negotiable in whole or in part, clarification was required.

City of Palo Alto, 5 Cal. App. 5th at 1308 (citing *Healdsburg Union High School Dist./San Mateo City School Dist.*, PERB Dec. No. 375 (1984)).

The Council must allow sufficient time to resolve all collective bargaining issues and to complete any impasse procedures, including any required factfinding process under Government Code section 3505.4. *San Diego Hous. Comm’n.*, 246 Cal. App. 4th at 18 (concluding that factfinding provisions apply to all impasses and not just impasses arising during negotiations of memoranda of understanding); *County of Riverside v. Public Employment Relations Bd.*, 246 Cal. App. 4th 20, 24 (2016) (stating “factfinding provisions apply to impasses arising during the negotiation of any bargainable matter”). The factfinding process includes statutory timelines that may delay resolution of impasses by 90 or more days. *See* Cal. Gov’t Code § 3505.4.

CONCLUSION

This Office is available to provide further legal analysis as requested, and to receive further direction. Please note that Attachment B is a draft, subject to further analysis, if the

provisions are modified by the Committee, the Council, or as a result of the meet and confer process. Accordingly, additional legal review and analysis will likely be required.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Joan F. Dawson

Joan F. Dawson

Deputy City Attorney

JFD:jdf:ccm

RC-2019-6

Doc. No. 2203999_2

Attachments: A - Women Occupy Proposal

B - City Attorney Draft

C - City Attorney Annotated Chart

cc: Andrea Tevlin, Independent Budget Analyst



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: June 21, 2019
TO: Ruth Martin, Rules Committee Consultant
FROM: Elizabeth Maland, City Clerk
SUBJECT: Ballot Proposals for Committee Review

Attached is a ballot proposal filed in my office pursuant to Council Policy 000-21 for the submission of ballot proposals to be reviewed by the Committee for possible placement on the ballot.

Date Filed	Topic	Proponent
6/21/2019	Amendment to San Diego City Charter, Article V, Section 40, City Attorney	Women Occupy San Diego (WOSD)

EM/cas

cc: Matt Yagyagan, Director of Legislative Affairs
Sharon Spivak, Deputy City Attorney

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June 21, 2019

VIA EMAIL

Ms. Elizabeth Maland
San Diego City Clerk
202 C St., Second Floor
San Diego, CA 92101
cityclerk@sandiego.gov

Re: Request for placement of proposed amendment to the San Diego City
Charter on the November 2020 ballot

Dear Ms. Maland:

On behalf of Women Occupy San Diego (WOSD), I am submitting the attached proposed amendment to the San Diego City Charter for placement on the November 2020 ballot. I understand that as a result of providing you with the attached charter amendment, you will present it to the San Diego City Council Rules Committee for initial consideration.

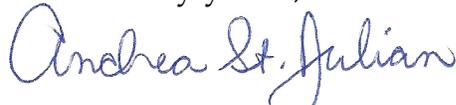
As your office may be aware, last year, WOSD submitted a similar ballot proposal approximately nine months before the November 2018 election. Despite the timeliness of the filing, that proposed charter amendment could not be placed on the ballot 2018 because there was insufficient time to comply with what the City Attorney's Office determined were meet and confer requirements.

In order to avoid the difficulties that occurred with respect to last year's proposed charter amendment, WOSD requests that the Rules Committee place the amendment as an item on its July 31 calendar. A placement on the July 31 calendar will ensure that there is sufficient time to satisfy any meet and confer requirements the City Attorney believes is necessary.

Ms. Elizabeth Maland
June 21, 2019
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I would appreciate it if you would confirm your receipt and filing of the attached charter amendment. If you need anything further, please contact me at your earliest convenience.

Sincerely yours,



Andrea R. St. Julian

Enclosure: WOSD Proposed Amendment to
the San Diego City Charter, November 2020 ballot

cc via email: Diana Fuentes dfuentes@san diego.gov
Clarissa Santiago csantiago@san diego.gov
Ruth Martin MartinRO@san diego.gov

AMENDMENT TO THE SAN DIEGO CITY CHARTER
Proposed by Women Occupy San Diego
For November 2020 Election Ballot

Part A. Amendment to the Charter of the City of San Diego.

Section 40: City Attorney of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

A City Attorney shall be elected for a term of four years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission and the Commission on Police Practices, which shall have ~~its~~ their own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

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

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

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

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

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

Section 41: Commissions of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

With the exception of members appointed to the Commission on Police Practices,

~~the~~ The Mayor shall appoint, subject to the confirmation of the Council, members of all commissions established pursuant to this section. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two-thirds (2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the commission member and an opportunity afforded for public hearing before the Council upon such charges. The City Council may remove members of the Commission on Police Practices for cause by vote of a majority of the members of the Council. Cause to remove a member of the Commission on Police Practices shall be defined by ordinance. The City Council may remove members of all other commissions established pursuant to this section for cause by vote of a majority of the members of the Council.

- (a) Funds Commission. This Commission shall have supervision and control over all trust, perpetuity, and investment funds of the City and such pension funds as shall be placed in its custody, and shall administer them subject to the laws of the State and ordinances of the Council. The membership of this Commission shall be appointed by the Mayor and confirmed by the Council and shall be one bank official, two unclassified citizens, and the City Attorney and City Treasurer, ex officio. They shall serve without compensation for terms of four (4) years and until their successors are elected and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year.
- (b) Civil Service Commission. There shall be a Civil Service Commission consisting of five members who shall be electors of the City. Not more than three members of the Commission shall be of the same sex. The Mayor, with the approval of the Council, shall appoint the members of the Commission. The members of the Commission shall be appointed to serve for five years and until their successors have been appointed and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year. The Mayor, with the approval of the Council, shall fill any vacancy.

Members of the Civil Service Commission shall not hold any other office in City Government.
- (c) City Planning Commission. The City Planning Commission shall be organized as provided by the laws of the State and have such powers and perform such duties as are prescribed by such laws. The duties of the Commission shall also include advising upon public buildings, bridges, retaining walls, approaches, park and

harbor structures, the improvement of Pueblo lands and such other improvements as the Council may by ordinance determine. The Commission shall consist of seven (7) members appointed by the Mayor, subject to the confirmation of the Council. The City Engineer, and the City Attorney, or their designated representatives, shall be members ex officio, but neither of said officers shall have a vote. The members of this Commission shall serve without compensation for terms of four years and until their successors are elected and appointed and qualified.

(d) Commission on Police Practices. The Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures provided by this Charter and by ordinance, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Commission on Police Practices is required to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its duties and powers.

~~(d)~~(e) Ethics Commission. For so long as an Ethics Commission remains established by ordinance of the Council, the Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Ethics Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties

Section 41.2: Commission on Police Practices of the Charter of the City of San Diego is added to read (new text is shown by underlining):

A Commission on Police Practices is hereby established. The establishment of this Commission supersedes the Community Review Board on Police Practices previously created by the San Diego City Charter.

(1) The Commission on Police Practices is an independent Commission, not a Board of the City of San Diego.

(2) The Commission is required to perform the following duties:

- (A) the duty to investigate (1) all deaths occurring while a person is in the custody of the Police Department of the City of San Diego; (2) all deaths resulting from interaction with an officer of the Police Department of the City of San Diego; and, (3) all police officer-related shootings. The Commission shall have these duties whether or not a complaint has been submitted. Such investigations must be conducted by investigators independent of the San Diego Police Department;
 - (B) the duty to receive, register, review and evaluate all complaints made against officers of the Police Department of the City of San Diego;
 - (C) the duty to review all findings and conclusions of the San Diego Police Department arising from investigations of police misconduct. This review must be conducted before any implementation of police officer discipline;
 - (D) the duty to review discipline decisions proposed by the Chief of Police (or any other entity with the power to impose officer discipline) as a result of any allegations of police misconduct prior to their implementation;
 - (E) the duty to evaluate the Police Department of the City of San Diego's compliance with federal, state, and local reporting laws and requirements;
 - (F) the duty to submit quarterly reports to the Mayor and City Council regarding the exercise of the Commission's duties and powers. Such reports shall be public but may not disclose any information required to be kept confidential by federal or state law; and,
 - (G) any additional duties established by ordinance and consistent with duties established in this Section.
- (3) The Commission may, at its discretion, exercise the following powers:
- (A) the power to review, evaluate, and investigate all complaints against officers of the San Diego Police Department;
- In determining whether to investigate a matter that the Commission has the power but not the duty to investigate, the Commission shall consider whether the complaint arises from any of the following incidents:
- (1) An incident in which the use of force by a San Diego police officer against a person resulted in great bodily injury;
 - (2) Dishonesty by a San Diego police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited

to, an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence;

(3) An incident that has generated substantial public interest or concern; and,

(4) Any other incident the Commission deems is appropriate.

- (B) the power to review, evaluate, and investigate upon receipt of a written complaint all allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the San Diego Police Department as well as any other allegations of concern about the San Diego Police Department or its officers. In addition, for allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the San Diego Police Department, the Commission shall have power to review, evaluate, and investigate the allegations whether or not a written complaint has been submitted;
- (C) the power to review and evaluate the policies, procedures, practices, and actions of the Police Department of the City of San Diego;
- (D) the power to retain or employ (1) independent investigators to conduct investigations; (2) policy analysts to evaluate the policies, procedures, practices; and actions of the Police Department of the City of San Diego; (3) individuals to evaluate the Police Department of the City of San Diego's compliance with federal, state, and local reporting laws and requirements and, (4) such other staff as is appropriate;
- (E) the power to subpoena witnesses, compel their attendance, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers, subject to the restrictions of applicable federal and state law;
- (F) the power to make recommendations to the Police Department of the City of San Diego on the discipline of individual officers against whom complaints have been made or on whom the Commission has conducted an investigation;
- (G) the power to review and evaluate the administration of discipline arising from sustained complaints and other matters investigated by the Commission;
- (H) the power to make specific recommendations to the Police Department of the City of San Diego and the San Diego City Mayor on the policies,

procedures, practices and actions of the Police Department of the City of San Diego; and,

- (I) any additional powers established by ordinance and consistent with powers established in this Section.
- (4) All records or other materials of the San Diego Police Department relating to any matter reviewed, evaluated, or investigated by the Commission on Police Practices shall be made available to the Commission on Police Practices within the restrictions of applicable federal and state law.
- (5) The Commission on Police Practices must seek and receive legal advice from independent legal counsel, not the Office of the City Attorney.
- (6) Within 120 days of this amendment's adoption, the Mayor and City Council must establish and fund a sufficient and appropriate budget for the Commission that will allow it to effectively carry out its duties and powers.
- (7) Any provisions of the San Diego City Charter in conflict with this amendment are hereby amended to conform to the terms of this amendment.
- (8) Within 120 days of this amendment's adoption, the San Diego City Council must enact an ordinance which:
 - (A) details the duties and powers of the Commission on Police Practices;
 - (B) establishes the number, term and method for appointing members to the Commission. Commission members must include at least two youth members, who at the time of their appointments are at least eighteen but less than twenty-one years old. The number, term and method established by ordinance may differ from the number, term and method described in Section 41 of the San Diego City Charter;
 - (C) establishes the circumstances and process under which a member of the Commission may be removed from the Commission and establishes cause for removal. The removal process established by ordinance may differ from that described in Section 41 of the San Diego City Charter; and,
 - (D) does not interfere with the Commission's authority to independently refer a matter under investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency.
- (9) Within 120 days of this amendment's adoption, the San Diego City Council must repeal those ordinances or parts of ordinances pertaining to the Community Review Board on Police Practices.

- (10) At the time the amendment is adopted, the existing Community Review Board on Police Practices is immediately dissolved. The members of the Community Review Board on Police Practices at the time the amendment is adopted shall immediately become the interim members of the Commission on Police Practices and shall serve in that capacity until the San Diego City Council has enacted an ordinance as described in paragraph (8) of this section and new members are appointed to the Commission pursuant to the procedures established in that ordinance. These interim members may, at their discretion, retain their staff members from the Community Review Board on Police Practices to assist them in their capacity as interim members of the Commission on Police Practices. Should an interim member of the Commission resign before the San Diego City Council has enacted an ordinance as described in paragraph (8) of this section and new members are appointed to the Commission pursuant to the procedures established in that ordinance, the position shall be considered vacant and eligible for the Mayor to appoint and the City Council to confirm a new interim member, who shall serve only until the new members are appointed.
- (11) At the time the amendment is adopted, the Commission on Police Practices shall be funded using the same funds at the same level as those designated for the Community Review Board on Police Practices, and funding at this rate shall continue until the Mayor and City Council have established and funded a sufficient and appropriate budget for the Commission as required in paragraph (6) of this section.

Section 43: Advisory Boards and Committees of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

- (a) The City Council may by ordinance create and establish advisory boards. Such boards shall be advisory to the Mayor, Council or City Manager as may be designated by ordinance. All members of such boards shall be appointed by the Mayor with Council confirmation, and the terms of office of such members may extend beyond the elective term of the appointing Mayor. The members of such boards shall serve without compensation and it shall be their duty to consult and advise with the Mayor, Council or City Manager, as the case may be, but not to direct the conduct of any Department or Division. Members of such advisory boards shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed.
- (b) The Mayor, City Council or City Manager may create and establish citizens' committees. Such committees shall be created and established only for the purpose of advising on questions with clearly defined objectives, and shall be temporary in nature, and shall be dissolved upon the completion of the objectives for which they were created. Committee members shall serve without compensation.

- (c) Whenever under the provisions of this Charter or ordinance the Mayor is vested with authority to appoint the members of boards or committees and does not take such action within forty-five (45) days after the board or committee has been established or a vacancy occurs, then the Council shall make such appointments. The Council may remove committee and board members by vote of a majority of the members of the Council.
- ~~(d) Community Review Board on Police Practices. Notwithstanding any other provision of this Charter, the Mayor and City Council shall have the exclusive authority to create and establish a community review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The Mayor and City Council shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers. Nothing in such rules and regulations shall interfere with the board's authority to independently refer a completed citizen complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency. The board shall review all deaths occurring while a person is in the custody of the San Diego Police Department and all police officer-related shootings. The board shall submit semiannual reports to the Mayor and City Council concerning its evaluation of the San Diego Police Department's investigation of citizens' complaints; provided, however, that such reports shall not disclose any information required to be kept confidential by law.~~

Part B. Severability.

If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

Part C. Impact of concurrent ballot measures.

Should this amendment be adopted, any concurrently adopted amendment to the San Diego City Charter that relates only to the Community Review Board on Police Practices would not be in conflict with this amendment, but instead would be rendered moot and not go into effect, as this amendment immediately dissolves the Community Review Board on Police Practices.

**ATTACHMENT B TO
OFFICE OF THE CITY ATTORNEY REPORT
TO THE PUBLIC SAFETY AND LIVABLE NEIGHBORHOODS COMMITTEE FOR
OCTOBER 23, 2019 MEETING**

**DRAFT PROPOSAL FOR DISCUSSION PURPOSES AMENDING CHARTER
SECTIONS 40 AND 41 AND ADDING CHARTER SECTION 41.2 RELATED TO
ESTABLISHMENT OF COMMISSION ON POLICE PRACTICES**

OLD LANGUAGE: ~~STRIKE-OUT~~
NEW LANGUAGE: DOUBLE UNDERLINE

**ARTICLE V
EXECUTIVE AND ADMINISTRATIVE SERVICE**

SECTION 40: CITY ATTORNEY

A City Attorney shall be elected for a term of four years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.

[P-1] The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission and the Commission on Police Practices, which each shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term

for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any

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

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

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

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

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California, provided that the salary of the City Attorney may not be decreased during a term of office.

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

SECTION 41: COMMISSIONS

[P-1] The Mayor shall appoint, subject to the confirmation of the Council, members of all City commissions, except the members of the Commission on Police Practices, whose appointment is governed by Section 41.2 of this Charter. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two-thirds (2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the commission member and an opportunity afforded for public hearing before the Council upon such charges.

(a) NO CHANGE IN TEXT.

(b) NO CHANGE IN TEXT.

(c) NO CHANGE IN TEXT.

(d) NO CHANGE IN TEXT.

SECTION 41.2: COMMISSION ON POLICE PRACTICES

[P-1] A Commission on Police Practices is established, which supersedes the Community Review Board on Police Practices. The Commission on Police Practices is referred to in this section as the “Commission” and the Police Department of the City of San Diego is referred to as the “Police Department.”

[P-2] The Commission is an investigatory body of the City of San Diego, independent of the Mayor and the Police Department.

[P-3] The Commission has certain mandatory duties and discretionary powers, as described in this section. The City Council may, by ordinance, mandate additional duties and authorize additional powers for the Commission, consistent with this section and applicable federal and state law. The City Council may also establish rules and procedures to implement this section. Subject to any limitations set forth in governing federal or state law, the Commission is authorized to refer any matter before the Commission to the grand jury, district attorney, or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.

[P-4] The City Council must appoint the members of the Commission. The City Council may remove members of the Commission for cause by a vote of a majority of the members of the City Council. The City Council must, by ordinance, establish the number, term length, and method for

¹ We have numbered the paragraphs in this draft to assist in its review and discussion. The numbered paragraphs are for reference only and are not intended to appear in any finished work product. The Charter generally does not use numbered or lettered sub-sections or paragraphs when setting forth related provisions.

appointing members to the Commission, and define the circumstances and process under which the City Council determines there is cause for removal of a member of the Commission.

[P-5] The Commission will be composed of members of the Community Review Board on Police Practices, serving at the time this section takes effect, until the City Council has formally appointed members to the Commission, in accordance with the ordinance described in this section.

[P-6] The City Council must appoint and establish the initial annual compensation for the Commission's Executive Director, who serves at the direction and will of the Commission. The Commission must conduct the annual performance review of the Executive Director, and may modify the Executive Director's annual compensation, consistent with the compensation schedules established by the City Council in adopting the annual salary ordinance. The Executive Director serves as the appointing authority for additional employees assisting the Commission, who must be appointed and serve in accordance with this Charter. The Executive Director is authorized to employ outside experts or consultants to assist with the Commission's work on a contractual basis, consistent with the City's contracting rules. The Commission must retain its own legal counsel, who is independent of the City Attorney, for legal support and advice in carrying out the Commission's duties and actions.

[P-7] The Executive Director serves as custodian of the Commission's records and must comply with all applicable laws related to records retention, protection, confidentiality, and disclosure. The Police Department must make available its records, relating to any matter under investigation, review, or evaluation by the Commission, subject to the restrictions of applicable federal and state law.

[P-8]The Commission has the power to conduct investigatory proceedings, subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission’s duties or exercise of its powers, subject to the restrictions of and in accordance with this section and applicable federal and state law. The Commission may enforce its administrative subpoenas by initiating contempt procedures, upon a majority vote of the Commission and in the manner provided by applicable state law.

[P-9]The Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff for contractors who are independent of the Police Department, and in accordance with the officer’s federal and state law rights.

[P-10]The Commission must receive, register, review and evaluate all complaints against officers of the Police Department. The Commission may, but is not required, to investigate complaints against officers of the Police Department, which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings.

[P-11]In determining whether to investigate a complaint that the Commission has the discretionary power, but not the mandatory duty, to investigate, the Commission must consider whether the complaint arises from any of the following: (1) an incident in which the use of force by a City police officer against a person resulted in great bodily injury; (2) dishonesty by a City police

officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; (3) an incident that has generated substantial public interest or concern; (4) an incident in which data shows a pattern of misconduct by any Police Department officer; and (5) an incident in which data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members. The Commission will not investigate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

[P-12] The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police misconduct, and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct, with the term “police misconduct” to be defined by the City Council by ordinance. The Commission may, but is not required, to review and evaluate the Police Department’s administration of discipline arising from sustained complaints, which do not involve allegations of police misconduct, and from matters investigated by the Commission. The Commission may, but is not required, to make recommendations to the Police Department on the discipline of individual officers against whom complaints have been made or about whom the Commission has conducted an investigation.

[P-13] The Commission must review and evaluate the Police Department’s compliance with federal, state, and local reporting laws and requirements. The Commission must also prepare and submit semi-annual reports to the Mayor and City Council regarding the exercise of the

Commission's duties and powers. These reports must be public, but must not disclose any information required to be kept confidential by controlling federal or state law.

[P-14]The Commission may, but is not required, to review, evaluate, and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the Police Department, whether or not a written complaint has been submitted to the Commission or the Police Department. The Commission may, but is not required, to review, evaluate, and investigate any other allegations of concern about the Police Department or its officers, when a written complaint is received by the Commission or the Police Department.

[P-15]The Commission may, but is not required, to review and evaluate the policies, procedures, practices, and actions of the Police Department, The Commission may make specific recommendations to the Police Department, the Mayor, and the City Council on any policies, procedures, practices, and actions of the Police Department.

[P-16]The Chief of Police must consider the Commission's evaluation of proposed police officer discipline, prior to imposition of the discipline, to the extent permitted within applicable federal and state law, and only if completed before the statutory timelines, set forth in the California Public Safety Officers Procedural Bill of Rights or subsequent, applicable state laws, for the Police Department to act on the evaluation. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department, in accordance with Section 57 of this Charter.

SECTION 43: ADVISORY BOARDS AND COMMITTEES

(a) NO CHANGE IN TEXT.

(b) NO CHANGE IN TEXT.

(c) NO CHANGE IN TEXT.

~~(d) Community Review Board on Police Practices. Notwithstanding any other provision of this Charter, the Mayor and City Council shall have the exclusive authority to create and establish a community review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The Mayor and City Council shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers. Nothing in such rules and regulations shall interfere with the board's authority to independently refer a completed citizen complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency. The board shall review all deaths occurring while a person is in the custody of the San Diego Police Department and all police officer related shootings. The board shall submit semiannual reports to the Mayor and City Council concerning its evaluation of the San Diego Police Department's investigation of citizens' complaints; provided, however, that such reports shall not disclose any information required to be kept confidential by law.~~

JFD:
Doc. No. 2201954
10/18/2019

Para #	Text	Comment
Section 40: City Attorney		
P-1	<p>The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission <u>and the Commission on Police Practices,</u> which <u>each</u> shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.</p>	<p>This amendment is consistent with the Women Occupy Proposal, but with non-substantive grammatical change.</p>
Section 41: Commissions		
P-1	<p>The Mayor shall appoint, subject to the confirmation of the Council, members of all <u>City commissions, except the members of the Commission on Police Practices, whose appointment is governed by Section 41.2 of this Charter.</u> Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two-(2) full consecutive terms, with one-(1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two- thirds-(2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the commission member and an opportunity afforded for public hearing before the Council upon such charges.</p>	<p>The title of Charter section 41 appears to apply to all Commissions within the City, but titles are considered instructive only. The substance of the provision is what matters in interpretation. By its terms, Charter section 41 applies to Commissions, whose members are appointed by the Mayor. We have added a reference to the Commission on Police Practices, noting the Commission's exclusion from Charter section 41 and placement in Charter section 41.2.</p>

Section 41.2: Commission on Police Practices		We have located all substantive provisions related to the Women Occupy Proposal in Charter section 41.2. Note, that the Women Occupy Proposal places some substantive language in Charter section 41, but for purposes of Charter interpretation, it is better drafting to locate all substantive provisions together in one section. We have done that.
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P-1 A Commission on Police Practices is established, which supersedes the Community Review Board on Police Practices. The Commission on Police Practices is referred to in this section as the “Commission” and the Police Department of the City of San Diego is referred to as the “Police Department.” This introductory language is consistent with the Women Occupy Proposal, but with non-substantive grammatical changes.

P-2 The Commission is an investigatory body of the City of San Diego, independent of the Mayor and the Police Department. This language is consistent with the Women Occupy Proposal, but explains that the Commission’s independence is from the Mayor and Police Department, not from the City of San Diego, which is a municipal corporation. The Commission is proposed to be a commission of the City. Also, there is no need to mention City boards, as set forth in the Women Occupy Proposal. Boards are not applicable here.

P-3

The Commission has certain mandatory duties and discretionary powers, as described in this section. The City Council may, by ordinance, mandate additional duties and authorize additional powers for the Commission, consistent with this section and applicable federal and state law. The City Council may also establish rules and procedures to implement this section. Subject to any limitations set forth in governing federal or state law, the Commission is authorized to refer any matter before the Commission to the grand jury, district attorney, or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.

The Women Occupy Proposal sets forth the Commission's mandated duties and its discretionary powers in separate lists. To make it easier to read, we have combined the provisions, noting distinctions within each paragraph, covering a certain topic.

In addition, rather than rely on a severability provision that is not codified or incorporated into the Charter, it is better drafting to acknowledge applicable or controlling federal and state law within the actual language. This language acts as a codified "savings" clause.

P-4

The City Council must appoint the members of the Commission. The City Council may remove members of the Commission for cause by a vote of a majority of the members of the City Council. The City Council must, by ordinance, establish the number, term length, and method for appointing members to the Commission, and define the circumstances and process under which the City Council determines there is cause for removal of a member of the Commission.

The Women Occupy Proposal appears to be silent on the appointing authority for the Commission members. However, we infer the Council appoints the Commission. The additional language here is consistent with the Women Occupy Proposal at section 41 and section 41.2, paragraphs (8)(B) and (C), with non-substantive edits.

P-5

The Commission will be composed of members of the Community Review Board on Police Practices, serving at the time this section takes effect, until the City Council has formally appointed members to the Commission, in accordance with the ordinance described in this section.

This language tracks the Women Occupy Proposal at section 41.2, paragraph (10). We deleted language related to the Commission's authority over staff members, subordinate to the Executive Director, because that language is inconsistent with the City's employment provisions related to appointment of subordinate employees, set forth in the Charter and ordinances of the Council. Also, there is no mandate in the Women Occupy Proposal covering the number of required Commission members; therefore, the balance of paragraph (10) related to filling vacate positions can be left to ordinance of the Council. Also, authorizing the Mayor to appoint interim members, but not regular members is inconsistent, so we deleted the proposed language about Mayoral appointments.

P-6

The City Council must appoint and establish the initial annual compensation for the Commission's Executive Director, who serves at the direction and will of the Commission. The Commission must conduct the annual performance review of the Executive Director, and may modify the Executive Director's annual compensation, consistent with the compensation schedules established by the City Council in adopting the annual salary ordinance. The Executive Director serves as the appointing authority for additional employees assisting the Commission, who must be appointed and serve in accordance with this Charter. The Executive Director is authorized to employ outside experts or consultants to assist with the Commission's work on a contractual basis, consistent with the City's contracting rules. The Commission must retain its own legal counsel, who is independent of the City Attorney, for legal support and advice in carrying out the Commission's duties and actions.

This language is consistent with the Women Occupy Proposal, with the replacement of the word "pleasure" with "will," which is the more appropriate employment term. We added language to establish the appointing authority for subordinate Commission employees. Also, the City's contracting rules are set forth in the Charter, at section 94, among others, as well as in Council ordinances codified in the San Diego Municipal Code.

P-7 The Executive Director serves as custodian of the Commission's records and must comply with all applicable laws related to records retention, protection, confidentiality, and disclosure. The Police Department must make available its records, relating to any matter under investigation, review, or evaluation by the Commission, subject to the restrictions of applicable federal and state law.

P-8 The Commission has the power to conduct investigatory proceedings, subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers, subject to the restrictions of and in accordance with this section and applicable federal and state law. The Commission may enforce its administrative subpoenas by initiating contempt procedures, upon a majority vote of the Commission and in the manner provided by applicable state law.

We added language to ensure that the Charter incorporates the limitations set forth in controlling law and language on enforcement of subpoenas.

P-9 The Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff for contractors who are independent of the Police Department, in accordance with the officer's federal and state law rights.

Paragraphs P-9 through P-15 track the Women Occupy Proposal. However, we merged section 41.2, paragraphs (2) and (3) of the Women Occupy Proposal based on topic, so that the reader can understand, within each paragraph, which Commission functions are mandatory and which are discretionary. Also, the Proposal is silent on the timing of the investigation. Under current practice, the Police Department's internal investigation is tolled when there is an open criminal investigation by the District Attorney's Office. An officer under criminal investigation is likely to assert his or her constitutional rights. We have added language to recognize and this situation.

P-10

The Commission must receive, register, review, and evaluate all complaints against officers of the Police Department. The Commission may, but is not required, to investigate complaints against officers of the Police Department, which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings.

This language tracks the Women Occupy Proposal. Note, though, that this language mandates that the Commission receive, register, review and evaluate all complaints against officers of the Police Department. This language creates a workload that may be greater than what is presently required of the Community Review Board on Police Practices.

P-11

In determining whether to investigate a complaint that the Commission has the discretionary power, but not the mandatory duty, to investigate, the Commission must consider whether the complaint arises from the following: (1) an incident in which the use of force by a City police officer against a person resulted in great bodily injury; (2) dishonesty by a City police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; (3) an incident that has generated substantial public interest or concern; (4) an incident in which data shows a pattern of misconduct by any Police Department officer; and (5) an incident in which data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members. The Commission will not investigate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

This language tracks the Women Occupy Proposal and the Committee's September 18, 2019 motion.

- P-12 The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police misconduct, and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct, with the term "police misconduct" to be defined by the City Council by ordinance. The Commission may, but is not required, to review and evaluate the Police Department's administration of discipline arising from sustained complaints, which do not involve allegations of police misconduct, and from matters investigated by the Commission. The Commission may, but is not required, to make recommendations to the Police Department on the discipline of individual officers against whom complaints have been made or about whom the Commission has conducted an investigation.
- P-13 The Commission must review and evaluate the Police Department's compliance with federal, state, and local reporting laws and requirements. The Commission must also prepare and submit semi-annual reports to the Mayor and City Council regarding the exercise of the Commission's duties and powers. These reports must be public, but must not disclose any information required to be kept confidential by controlling federal or state law.
- P-14 The Commission may, but is not required, to review, evaluate, and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the Police Department, whether or not a written complaint has been submitted to the Commission or the Police Department. The Commission may, but is not required, to review, evaluate, and investigate any other allegations of concern about the Police Department or its officers, when a written complaint is received by the Commission or the Police Department.
- This language tracks the Women Occupy Proposal. We added adjectives to better describe and distinguish the terms: "findings" and "conclusions." Also, "police misconduct" is not defined. The Council may define it by ordinance. In addition, "sustained complaint" is the phrase used by the Police Department to describe a complaint that is determined to be supported by factual findings.
- This language is consistent with the Women Occupy Proposal.
- This language is consistent with the Women Occupy Proposal. Note, though, that "any other allegations of concern" is not defined. This term could be construed broadly and arbitrarily.

P-15 The Commission may, but is not required, to review and evaluate the policies, procedures, practices, and actions of the Police Department. The Commission may make specific recommendations to the Police Department, the Mayor, and the City Council on any policies, procedures, practices, and actions of the Police Department.

This language is consistent with the Women Occupy Proposal. Note, though, that "actions" is not defined. This term could be construed broadly and arbitrarily.

P-16 The Chief of Police must consider the Commission's evaluation of proposed police officer discipline, prior to imposition of the discipline, to the extent permitted within applicable federal and state law, and only if completed before the statutory timelines, set forth in the California Public Safety Officers Procedural Bill of Rights or subsequent, applicable state laws, for the Police Department to act on the evaluation. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department, in accordance with Section 57 of this Charter.

This sections tracks the Women Occupy Proposal, but we added language to incorporate the statutory timelines covering discipline of peace officers set forth in state law. Also, we added language to ensure consistency with Charter section 57.