THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: April 12, 2016 REPORT NO: 16-038

ATTENTION: Charter Review Committee

SUBJECT: Charter Publication Requirements and Recommendations

REFERENCE: Charter Sections 18, 35, 99, 113, and 114

REQUESTED ACTION: 1)Repeal Charter Section 113 and request that the City Attorney's Office perform a legal review to evaluate if the repeal could be included within the proposed ballot measure to update the Charter sections on Purchasing and Contracting; 2) Refer possible Municipal Code changes and procedural changes regarding publication within the "official city newspaper" and the use of the "City Bulletin" to the Rules Committee; 3) Request that the Intergovernmental Relations staff review the Legislative Platform and include lobbying for and/or proactively seeking changes to the State mandated publication requirements that specify hard-copy printing in a newspaper of general circulation.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: At the February 5, 2015 Charter Review Committee, there was discussion regarding the City's current noticing/publishing requirements and the ability to move to online noticing. From this discussion the City Clerk compiled a draft of the governing documents that require noticing/printing within the City's "Official newspaper" from the Charter, Municipal Code and State Government Code.

The City Attorney's office has been working on a document that would outline these requirements and the governing authority. Once this work is completed, it is recommended that the Rules Committee review the city's publication requirements and give further direction to possibly revise the municipal code and current procedures in order to move to online noticing through the use of the "City Bulletin."

Per Charter Section 114, "The City Bulletin shall be published in lieu of the awarding of a contract for publication of official advertising in a newspaper of the City when the Council shall determine that it is to the best advantage of the City." Currently, required publications (official advertising, resolutions/ordinances, contracts over 5 years, etc.) are published in *The Daily Transcript*. *The Daily Transcript* publishes 100 hard copies and is only available via subscription; it is largely an online publication. It could be determined that it is now to the "best advantage" of the City and its citizens for the publication of official advertising and other required noticing to be done within a "City Bulletin."

If this is the desired outcome, the next step would be to request the City Attorney's Office, Mayor's Office, City Clerk, and Director of Legislative Affairs review the pertinent Municipal Code sections and recommend amendments that would remove all requirements for "newspaper publication" for items under municipal control and not required by state or federal law.

Additionally, it is recommended that the Committee request that the Intergovernmental Relations staff review the Legislative Platform and include lobbying for and/or proactively seeking changes to the State mandated noticed public hearing and other publication requirements by possibly expanding the language to allow for an online "City Bulletin" or other technologically advanced forms of noticing. Electronic publishing in the "City Bulletin" with a hard copy to be kept in the Clerk's office would increase public access to city government and decrease costs for such access.

Lastly, after further review of the City Charter, Sections 18, 35, 99, 113, and 114 have references to publishing in the official city newspaper and are either recommended for removal as part of the Purchasing and Contracting Charter amendments or to leave the section as is with possible municipal code amendments to be reviewed by the Rules Committee.

Recommendations on how to proceed for each section can be found below:

- Charter Section 18: Authentication and Publication of Ordinances and Resolutions- No charter changes are recommended. Further legal review and possible Municipal Code amendments and use of the "City Bulletin" should return to Rules Committee for further review.

- Charter Section 35: Purchasing Agent- Section is being consolidated within the Purchasing and Contracting proposed Charter amendments and the following language removed: "Notices calling for such sealed proposals shall be published for one day in the official newspaper of the City, and a contract let for such purpose only after the expiration of ten days following said advertising."

- Charter Section 99: Section is being consolidated within the Purchasing and Contracting proposed Charter amendments and the following language removed, "No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance."

- Charter Section 113: Official Advertising- Recommend repealing this section and adding the process of choosing the "Official City Newspaper" into the municipal code for state government code required publications. Request legal review in order to evaluate is this section could be included within the Purchasing and Contracting proposed Charter amendments.

- Charter Section 114: Bureau of Information and Publicity- Recommend leaving this section as is and further evaluating the use of the "City Bulletin."

FISCAL CONSIDERATIONS: The cost of placing measures on the November 2016 ballot for possible repeal of Charter Section 113 is unknown at this time.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS: At the February 5, 2015 Charter Review Committee, there was a motion by Councilmember Emerald to refer the City Attorney's option to amend section 18 to remove the requirement to publish resolutions in the official city newspaper to the City Attorney and City Clerk; to return with drafted language, consistent with state regulations that would remove the requirement to publish resolutions in the official city newspaper. Second by Councilmember Cate. Passed unanimously.

Elizabeth Maland,
City Clerk

Diana Jurado-Sainz,
Director of Legislative Affairs

Attachment(s):

1. City Clerk Memo regarding NOTICING/PRINTING REQUIREMENTS Dated: February 2, 2015
2. City Attorney Report to the City Council regarding REPEAL OF CHARTER SECTIONS PROPOSED BY THE CHARTER REVIEW COMMITTEE AND PROPOSAL FOR GENDER-NEUTRAL CHARTER LANGUAGE, reference pages 5-6.Dated: February 8, 2016

THE CITY OF SAN DIEGO

MEMORANDUM

DATE: February 25, 2015

TO: Honorable Chair & Members of the Charter Review Committee

FROM: Elizabeth Maland, City Clerk

SUBJECT: Noticing/Printing Requirements

At the February 5, 2015 Charter Review Committee Meeting, I was asked to provide information related to the various print publication noticing requirements at both the state and local level. You will find the following attachments:

Attachment A: Sections of the California Government Code that either directly require print or published noticing, as well as sections of the code that define pertinent terms.

Attachment B: Sections of the San Diego City Charter that either directly guide the noticing process in my office, or sections that mention a requirement for print publication or use of the City's official newspaper.

Attachment C: Sections of the San Diego Municipal Code that either directly guide the noticing process in my office, or sections that mention a requirement for print publication or use of the City's official newspaper.

Attachment D: Internal guiding documents (i.e., written City Attorney material related to noticing and City Clerk Publication Guidelines created with the assistance of the City Attorney).

I have done my best to be as thorough as possible in response to the questions raised; however, a review by the City Attorney would be required to determine if there are additional state or local noticing and/or publication requirements that fall outside my area of expertise.

Elizabeth Maland

Elizabeth Maland
City Clerk

Attachment A

GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] *(Title 4 added by Stats. 1949, Ch. 79.)*

DIVISION 3. OFFICERS [36501 - 41805] *(Division 3 added by Stats. 1949, Ch. 79.)*
PART 2. LEGISLATIVE BODY [36801 - 40592] *(Part 2 added by Stats. 1949, Ch. 79.)*

CHAPTER 2. Ordinances [36900 - 36937] *(Chapter 2 added by Stats. 1949, Ch. 79.)*

ARTICLE 2. Enactment [36931 - 36937] *(Heading of Article 2 amended by Stats. 1955, Ch. 624.)*

36933. (a) Within **15 days** after its passage, the city clerk shall cause each **ordinance** to be published at least once, with the names of those city council members voting for and against the **ordinance**, in a newspaper of general circulation published and circulated in the city, or if there is none, he or she shall cause it to be posted in at least three public places in the city or published in a newspaper of general circulation printed and published in the county and circulated in the city. In cities incorporated less than one year, the city council may determine whether **ordinance**s are to be published or posted. **Ordinance**s shall not be published in a newspaper if the charge exceeds the customary rate charged by the newspaper for publication of private legal notices, but these **ordinance**s shall be posted in the manner and at the time required by this section.

(b) Except as provided in Section 36937, an **ordinance** shall not take effect or be valid unless it is published or posted in substantially the manner and at the time required by this section.

(c) The publication or posting of **ordinance**s, as required by subdivision (a), may be satisfied by either of the following actions:

(1) The city council may publish a summary of a proposed **ordinance** or proposed amendment to an existing **ordinance**. The summary shall be prepared by an official designated by the city council. A summary shall be published and a certified copy of the full text of the proposed **ordinance** or proposed amendment shall be posted in the office of the city clerk at least five days prior to the city council meeting at which the proposed **ordinance** or amendment or alteration thereto is to be adopted. Within **15 days** after adoption of the **ordinance** or amendment, the city council shall publish a summary of the **ordinance** or amendment with the names of those city council members voting for and against the **ordinance** or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted **ordinance** or amendment along with the names of those city council members voting for and against the **ordinance** or amendment; or

(2) If the city official designated by the city council determines that it is not feasible to prepare a fair and adequate summary of the proposed or adopted **ordinance** or amendment, and if the city council so orders, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city shall be published at least five days prior to the city council meeting at which the proposed **ordinance** or amendment or alteration thereto is to be adopted. Within **15 days** after adoption of the **ordinance** or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the proposed or adopted **ordinance** or amendment, including information sufficient to enable the public to obtain copies of the complete text of the **ordinance** or amendment, and the names of those city council members voting for and against the **ordinance** or amendment.

(d) (1) Any member of the public may file with the city clerk, or any other person designated by the governing body to receive these requests, a request for notice of specific proposed **ordinance**s or proposed amendments to **ordinance**s.

(2) Notice pursuant to paragraph (1) shall be mailed or otherwise transmitted at least five days before the council is scheduled to take action on the proposed **ordinance**s or proposed amendments to an **ordinance**. Notice may be given by written notice properly mailed or by e-mail if the requesting member of the public provides an e-mail address. Notice may be in the form specified in either paragraph (1) or (2) of subdivision (c), as determined by the city council.

(3) As an alternative to providing notice as requested of specific proposed **ordinance**s or proposed amendments to **ordinance**s, the city clerk, or other person designated by the governing body, may place the requesting member of the public on a general mailing list that gives timely notice of all governing body public meetings at which proposed **ordinance**s or proposed amendments to **ordinance**s may be heard, as provided in Section 54954.1. If this alternative is selected, the requesting member of the public shall be so advised.

(4) The city may charge a fee that is reasonably related to the costs of providing notice pursuant to this subdivision. The city may require each request to be annually renewed.

(5) Failure of the requesting person to receive the information pursuant to this subdivision shall not constitute grounds for any court to invalidate an otherwise properly adopted **ordinance** or amendment to an **ordinance**.

(Amended by Stats. 2002, Ch. 159, Sec. 1. Effective January 1, 2003.)

GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] *(Title 4 added by Stats. 1949, Ch. 79.)*

DIVISION 3. OFFICERS [36501 - 41805] *(Division 3 added by Stats. 1949, Ch. 79.)*
PART 3. OTHER OFFICERS [40601 - 41805] *(Part 3 added by Stats. 1949, Ch. 79.)*

CHAPTER 2. City Clerk [40801 - 40814] *(Chapter 2 added by Stats. 1949, Ch. 79.)*

40804. The city clerk shall cause a summary of the city's financial report required by Section 53891, in a form prescribed by the State Controller, to be published once in a newspaper of general **circulation**, pursuant to Article 1 (commencing with Section 6000), Chapter 1, Division 7, Title 1 of the Government Code. If there is no such newspaper he shall cause copies of the statement to be posted in three public places in the city designated by ordinance as the places for posting of public notices.

(Added by Stats. 1968, Ch. 857.)

GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] *(Title 4 added by Stats. 1949, Ch. 79.)*

DIVISION 3. OFFICERS [36501 - 41805] *(Division 3 added by Stats. 1949, Ch. 79.)*
PART 3. OTHER OFFICERS [40601 - 41805] *(Part 3 added by Stats. 1949, Ch. 79.)*

CHAPTER 2. City Clerk [40801 - 40814] *(Chapter 2 added by Stats. 1949, Ch. 79.)*

40806. The city clerk shall keep a book marked "**ordinances**" and record in it all city **ordinances** with his certificate annexed to each, stating:

(a) It is a true and correct copy of a city **ordinance**.

(b) The **ordinance** number.

(c) It has been **publish**ed or posted pursuant to law.

(Added by Stats. 1949, Ch. 79.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 1. CITIES AND COUNTIES [50001 - 52203] *(Division 1 added by Stats. 1949, Ch. 81.)*
PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5] *(Part 1 added by Stats. 1949, Ch. 81.)*
CHAPTER 1. General [50001 - 50290] *(Chapter 1 added by Stats. 1949, Ch. 81.)*

ARTICLE 2. Powers and Duties of Legislative Bodies [50020 - 50033] *(Article 2 added by Stats. 1949, Ch. 81.)*

50022.1. (a) "Code," as used in this article, means any statute, or any **publish**ed compilation of rules, regulations or standards adopted by the federal government or the State of California, or by any agency of either of them. It shall include any codification or compilation of existing **ordinance**s of the adopting local agency. It shall include any nationally recognized or approved **publish**ed compilations of proposed rules, regulations or standards of any private organization or institution which has been in existence for a period of at least three years.

(b) "Primary code," as used in this article, means any code which is directly adopted by reference, in whole or in part, by any **ordinance** passed pursuant to this article.

(c) "Secondary code," as used in this article, means any code which is incorporated by reference, directly or indirectly, in whole or in part, in any primary code or in any secondary code.

(d) "**Publish**ed," as used in this article, means issued in printed, lithographed, multigraphed, mimeographed or similar form.

(e) "Approved," as used in this article, means the approval of the legislative body of the local agency, as the result of investigation and tests conducted by such agency or by reason of the accepted principles or tests by recognized national or state authorities, technical, or scientific organizations.

(Amended by Stats. 1961, Ch. 1890.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 1. CITIES AND COUNTIES [50001 - 52203] *(Division 1 added by Stats. 1949, Ch. 81.)*
PART 1. POWERS AND DUTIES COMMON TO CITIES AND COUNTIES [50001 - 51298.5] *(Part 1 added by Stats. 1949, Ch. 81.)*
CHAPTER 1. General [50001 - 50290] *(Chapter 1 added by Stats. 1949, Ch. 81.)*

ARTICLE 2. Powers and Duties of Legislative Bodies [50020 - 50033] *(Article 2 added by Stats. 1949, Ch. 81.)*

50022.3. After the first reading of the title of the adopting ordinance and of the title of the code to be adopted thereby, and of the title of the secondary codes therein adopted by reference, the legislative body shall schedule a public hearing thereon. Notice of the hearing shall be published pursuant to Section 6066 in a newspaper of general **circulation** in or nearest to the adopting local agency. If there is no such newspaper in the county the notice shall be posted in the same manner as provided for the posting of a proposed ordinance. The notice shall state the time and place of the hearing. It shall also state that copies of the primary code and also copies of the secondary codes, if any, being considered for adoption, are on file with the clerk of the legislative body, and are open to public inspection. The notice shall also contain a description which the legislative body deems sufficient to give notice to interested persons of the purpose of the ordinance and the subject matter thereof.

(Amended by Stats. 1957, Ch. 357.)

GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] *(Title 4 added by Stats. 1949, Ch. 79.)*
DIVISION 4. FINANCIAL PROVISIONS [43000 - 43904] *(Division 4 added by Stats. 1949, Ch. 79.)*

CHAPTER 4. Bonds [43600 - 43904] *(Chapter 4 added by Stats. 1949, Ch. 79.)*

ARTICLE 4. Investment Bond Act of 1909 [43760 - 43797] *(Article 4 added by Stats. 1949, Ch. 79.)*

43794. Notice of the call for redemption shall be published once a week for two weeks in a newspaper of general **circulation** in the city. The first publication shall be not less than thirty days prior to the date fixed for redemption. Upon the date fixed, bonds called shall be redeemed at par and accrued interest to that date.

(Added by Stats. 1949, Ch. 79.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 1. CITIES AND COUNTIES [50001 - 52203] *(Division 1 added by Stats. 1949, Ch. 81.)*
PART 4. Economic Opportunity [52200 - 52203] *(Part 4 added by Stats. 2013, Ch. 659, Sec. 1.)*

CHAPTER 2. Sales and Leases [52201 - 52203] *(Chapter 2 added by Stats. 2013, Ch. 659, Sec. 1.)*

52201. (a) (1) Before any city, county, or city and county property that is returned to the city, county, or city and county per the long-range property management plan, pursuant to Section 34191.5 of the Health and Safety Code, is sold or leased for economic development purposes, the sale or lease shall first be approved by the legislative body by resolution after public hearing. Notice of the time and place of the hearing shall be published in a newspaper of general **circulation** in the community at least once per week for at least two successive weeks, as specified in Section 6066, prior to the hearing.

(2) The city, county, or city and county shall make available, for public inspection and copying at a cost not to exceed the cost of duplication, a report no later than the time of publication of the first notice of the hearing mandated by this section. This report shall contain both of the following:

(A) A copy of the proposed sale or lease.

(B) A summary that describes and specifies all of the following:

(i) The cost of the agreement to the city, county, or city and county, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the city, county, or city and county, plus the expected interest on any loans or bonds to finance the agreements.

(ii) The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the general plan or zoning.

(iii) The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the city, county, or city and county shall provide as part of the summary an explanation of the reasons for the difference.

(iv) An explanation of why the sale or lease of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation.

(b) The resolution approving the lease or sale shall be adopted by a majority vote unless the legislative body has provided by ordinance for a two-thirds vote for that purpose and shall contain a finding that the sale or lease of the property will assist in the creation of economic opportunity. The resolution shall also contain one of the following findings:

(1) The consideration is not less than the fair market value at its highest and best use.

(2) The consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease.

(c) The provisions of this section are an alternative to any other authority granted by law to cities to dispose of city-owned property.

(Added by Stats. 2013, Ch. 659, Sec. 1. Effective January 1, 2014.)

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] *(Title 4 added by Stats. 1949, Ch. 79.)*
DIVISION 4. FINANCIAL PROVISIONS [43000 - 43904] *(Division 4 added by Stats. 1949, Ch. 79.)*

CHAPTER 4. Bonds [43600 - 43904] *(Chapter 4 added by Stats. 1949, Ch. 79.)*

ARTICLE 3. Refunding Indebtedness [43720 - 43747] *(Article 3 added by Stats. 1949, Ch. 79.)*

43740. When sufficient money is in the funding fund to redeem one or more outstanding past due bonds, warrants, judgments, notes, or other evidences of indebtedness or to redeem one or more of the outstanding bonds, warrants, notes, or other evidences of indebtedness which are subject to call or payment before maturity, and which are proposed to be funded or refunded, the treasurer shall publish a notice that he is prepared to pay the bond, warrant, judgment, note, or other evidence of indebtedness (giving its number, if any). The notice shall be published once a week for two weeks in a newspaper of general **circulation** published in the city, if there is one. If the bond, warrant, judgment, note, or other evidence of indebtedness is not presented for redemption within thirty days after the first publication of the notice, the interest upon it ceases.

(Added by Stats. 1949, Ch. 79.)

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] *(Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66103] *(Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 2.7. Public Hearings [65090 - 65096] *(Chapter 2.7 added by Stats. 1984, Ch. 1009, Sec. 2.)*

65090. (a) When a provision of this title requires notice of a public hearing to be given pursuant to this section, notice shall be published pursuant to Section 6061 in at least one newspaper of general **circulation** within the jurisdiction of the local agency which is conducting the proceeding at least 10 days prior to the hearing, or if there is no such newspaper of general **circulation**, the notice shall be posted at least 10 days prior to the hearing in at least three public places within the jurisdiction of the local agency.

(b) The notice shall include the information specified in Section 65094.

(c) In addition to the notice required by this section, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.

(d) Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation. The Legislature finds that access restrictions to commercial establishments affecting the blind, aged, or disabled is a critical statewide problem; therefore, this subdivision shall be applicable to charter cities.

(Amended by Stats. 2000, Ch. 785, Sec. 1. Effective January 1, 2001.)

GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] *(Title 1 enacted by Stats. 1943, Ch. 134.)*
DIVISION 7. MISCELLANEOUS [6000 - 7599.2] *(Division 7 enacted by Stats. 1943, Ch. 134.)*
CHAPTER 1. Publications and Official Advertising [6000 - 6078] *(Chapter 1 enacted by Stats. 1943, Ch. 134.)*

ARTICLE 3. Publications [6040 - 6044] *(Article 3 enacted by Stats. 1943, Ch. 134.)*

6040.5. As used in any law of this State providing for any publication, or notice by publication, or official advertising, "daily newspaper" means a newspaper of general **circulation** that is published on five or more days in a calendar week, and "weekly newspaper" includes any newspaper of general **circulation** that is published on at least one, but less than five, days in a calendar week.

Any provision in any such law for publication in a weekly newspaper shall be deemed complied with if publication is made once a week for the period specified in a weekly newspaper as defined in this section.

(Added by Stats. 1949, Ch. 1587.)

GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] *(Title 1 enacted by Stats. 1943, Ch. 134.)*
DIVISION 7. MISCELLANEOUS [6000 - 7599.2] *(Division 7 enacted by Stats. 1943, Ch. 134.)*
CHAPTER 1. Publications and Official Advertising [6000 - 6078] *(Chapter 1 enacted by Stats. 1943, Ch. 134.)*

ARTICLE 3. Publications [6040 - 6044] *(Article 3 enacted by Stats. 1943, Ch. 134.)*

6040. Whenever any official advertising, notice, resolution, order, or other matter of any nature whatsoever is required by law to be published in a newspaper, such publication shall be made only in a newspaper of general **circulation**.

(Enacted by Stats. 1943, Ch. 134.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 3. CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000 [56000 - 57550] *(Heading of Division 3 amended by Stats. 2001, Ch. 388, Sec. 1.)*
PART 1. GENERAL [56000 - 56160] *(Part 1 added by Stats. 1985, Ch. 541, Sec. 3.)*

CHAPTER 4. Notice [56150 - 56160] *(Chapter 4 added by Stats. 1985, Ch. 541, Sec. 3.)*

56153. Notice required to be published shall be published pursuant to Section 6061 in one or more newspapers of general **circulation** within each affected county, affected city, or affected district. If any newspaper is a newspaper of general **circulation** in two or more affected cities or affected districts, publication in that newspaper shall be sufficient publication for all those affected cities or affected districts. If there are two or more affected counties, publication shall be made in at least one newspaper of general **circulation** in each of the affected counties.

(Repealed and added by Stats. 1985, Ch. 541, Sec. 3. Effective September 9, 1985. Operative January 1, 1986, by Sec. 5 of Ch. 541.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] *(Division 2 added by Stats. 1949, Ch. 81.)*

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] *(Part 1 added by Stats. 1949, Ch. 81.)*

CHAPTER 9. Meetings [54950 - 54963] *(Chapter 9 added by Stats. 1953, Ch. 1588.)*

54956. (a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general **circulation** and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(Amended by Stats. 2011, Ch. 692, Sec. 9. Effective January 1, 2012.)

GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57550] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] *(Division 2 added by Stats. 1949, Ch. 81.)*

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] *(Part 1 added by Stats. 1949, Ch. 81.)*

CHAPTER 2.5. The Mello-Roos Community Facilities Act of 1982 [53311 - 53368.3] *(Chapter 2.5 added by Stats. 1982, Ch. 1451, Sec. 1.)*

ARTICLE 5. Bonds [53345 - 53365.7] *(Article 5 added by Stats. 1982, Ch. 1451, Sec. 1.)*

53346. The clerk of the legislative body shall publish a notice of the hearing pursuant to Section 6061 in a newspaper of general **circulation** circulated within the district. The notice shall contain all of the following information:

(a) The text or a summary of the resolution adopted pursuant to Section 53345 which may refer to documents on file in the office of the clerk for detail.

(b) The time and place of the hearing on the proposal to issue debt.

(c) A statement that at the hearing the testimony of all interested persons, including all persons owning property in the area, for or against the proposed debt issuance, will be heard.

(Amended by Stats. 1992, Ch. 772, Sec. 7.7. Effective January 1, 1993.)

Attachment B

(Amendment voted 03-10-1953; effective 04-20-1953.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
(Section 16 was superseded by sections 275, 280, 285 and 290 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see sections 275, 280, 285 and 290.)
Prior Language

Section 17: When Ordinances and Resolutions Take Effect. Emergency Measures

(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Section 17 was superseded by section 295 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see section 295.)
Prior Language

Section 18: Authentication and Publication of Ordinances and Resolutions

Upon its final passage each ordinance or resolution shall be authenticated by the signatures of the Mayor and the City Clerk and shall be recorded in a book kept for that purpose. Within fifteen days after final passage the title and number of each ordinance or resolution of a general nature, together with a digest thereof prepared by the City Attorney, shall be published at least once in such manner as may be provided by this Charter or by ordinance. The publication shall be accompanied by the notice that the full text of the ordinance or resolution is available for perusal in the office of the City Clerk.
(Amendment voted 11-05-1974; effective 12-01-1975.)
(Amendment voted 11-07-1978; effective 01-12-1979.)
Prior Language

Section 19: Effect of Other Ordinances

All ordinances and resolutions in force at the time this Charter takes effect, not inconsistent with its provisions, shall continue in force until amended or repealed.

Section 20: Codification of Ordinances

The Council may by ordinance codify all of the ordinances of a general nature of the City into a Municipal Code. When so codified such Municipal Code and all sections thereof shall be admissible in all courts as prima facie evidence of the due passage and publication of the ordinances as codified.
(Amendment voted 03-10-1953; effective 04-20-1953.)

of any person for any municipal office. Nothing in this section shall be construed to prevent any officer or employee, whether Classified or Unclassified, from seeking election or appointment to public office or from being active in State or Federal political campaigns, in any bond issue campaign including municipal bond issues, or from being active in local political campaigns.

(b) Every municipal employee shall prohibit the entry into any place under his control occupied for any purpose of the municipal government, of any person for the purpose of therein making, collecting, receiving, or giving notice of any political assessment, subscription, or contribution.

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-06-1979; effective 12-17-1979.)
Prior Language

Section 32: Right of Manager and Other Officers in Council

The Manager and such other officers of the City as may be designated by a vote of the Council may attend all meetings of the Council but shall have no vote therein. The Manager or other officer so selected shall have the right to take part in discussions or matters properly before the Council relating to his office or may participate in discussions in such Council meetings when requested so to do by a member of the Council or a committee thereof.

Section 32.1: Responsibility of Manager and Non-managerial Officers to Report to Council

The City Manager and all non-managerial officers of the City shall inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council as provided under this Charter except as may be otherwise controlled by the laws and regulations of the United States or the State of California. The Manager and all non-managerial officers shall also comply promptly with all lawful requests for information by the Council.
(Addition voted 06-02-1992; effective 07-13-1992.)

Section 33: Manager's Control Department
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 34: Budget Officer
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 35: Purchasing Agent

The Purchasing Agent shall make all purchases of supplies, materials, equipment, and insurance required by the various Departments or offices of the City, except as may be otherwise provided by the Council or this Charter. He shall prepare in consultation with the administrative officers of the City standard specifications for all supplies, materials, equipment, and insurance necessary for use by the various Departments or offices of the City.

In purchasing any supplies, materials, equipment and insurance required by the various Departments or offices of the City, if the cost of said supplies, materials, equipment and insurance exceeds a sum to be established by ordinance of the City Council, no such purchase shall be made without advertising for sealed proposals therefor. Notices calling for such sealed proposals shall be published for one day in the official newspaper of the City, and a contract let for such purpose only after the expiration of ten days following said advertising. If the cost of the said supplies, materials, equipment and insurance required by said City falls within a dollar range also established by ordinance of the City Council, the said purchase may be made by said Purchasing Agent without advertising for sealed proposals, but not until said Purchasing Agent has secured competitive prices from merchants or other persons interested in making the sale to said City and not until the Purchasing Agent has been authorized by the Council to make such purchase. Purchases of supplies, materials, equipment and insurance required by the various Departments or offices of the City which do not exceed in cost a sum established by ordinance of the City Council may be made by the Purchasing Agent directly upon the request of the department interested.

The Council shall by ordinance provide for the sale, exchange or other disposal by the Purchasing Agent of any surplus, used, obsolete or depreciated personal property belonging to the City.

The Council by resolution may order the purchase without advertising for bids of surplus commodities from the United States of America, or any agency thereof, or from any other public corporation, state or municipal, or any agency thereof. The Council may authorize the Purchasing Agent to participate in joint and cooperative purchasing with any other public corporation, state or municipal, or agencies thereof. The Council may also authorize said Purchasing Agent to sell to any other public corporation, state or municipal, any supplies, material and equipment which said City may have been able to purchase in quantity at a reduced price.

Supplies shall be furnished upon requisition either from the stores under the control of the Purchasing Agent or by purchase, and whenever so purchased shall be paid for by the Department or office furnished therewith. It shall be the duty of the Purchasing Agent to inspect or cause to be inspected all purchases, and reject any of those which are not up to the standard specifications provided therefor, and he shall not approve any bid or voucher for articles which are not in conformity with specifications, or which are at variance with

any contract. The Purchasing Agent shall not furnish supplies to any Department or office unless there be to the credit thereof an available unencumbered balance sufficient to pay for such supplies.

Materials, supplies or equipment not needed by a Department or office, but necessary to another Department or office, may be transferred by the Purchasing Agent and a proper record made of the transaction. He shall have charge of such storerooms and warehouses of the City as the Manager may provide or the Council by ordinance may authorize. The Council may, upon recommendation of the Manager, authorize the Purchasing Agent to purchase materials, supplies, or equipment in common use by the Departments and offices in large quantities and store the same until requisitioned by the Departments or offices for use. The Council shall provide a sufficient revolving fund in the annual appropriation ordinance of an adequate amount for the purpose of creating a store's account and stock for future supply of the Departments and offices when needed.

The Purchasing Agent shall keep a record of all sources of supply, of all quotations received, of all awards made, of all inspections, of all requisitions filed, and of all vendors furnishing commodities to the City. He shall perform such other duties as may be prescribed by general law or ordinance or by the Manager.
(Amendment voted 03-10-1953; effective 04-20-1953.)
(Amendment voted 11-04-1958; effective 02-19-1959.)
(Amendment voted 11-04-1975; effective 12-1-1975.)
Prior Language

Section 36: City Engineer
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 37: Personnel Director

The Personnel Director shall be appointed by the Civil Service Commission and shall have all powers and perform all duties prescribed for such Personnel Director in Section 116 of Article VIII. In addition thereto he shall exercise general supervision over the employment policy of the City, subject to the Civil Service provisions of this Charter and the directions of the Civil Service Commission. He shall keep a record of the personnel conditions in the City service and shall, upon the request of the Manager or of the Civil Service Commission, or on his own initiative, investigate problems relating to the securing of a better class of applicants for positions, and to the maintenance of efficiency among City Employees, and to any and all other matters relating to this department as may properly come before him.

The Personnel Director, with the approval of the Civil Service Commission and the Manager shall have jurisdiction to investigate working conditions of City service as they

employee benefits provided, however, that no provision of a tentative agreement that fails to meet the conditions established in (a)-(d), above, shall become effective unless and until it is approved by a two-thirds majority of the full City Council.

From the effective date of this Section until June 30, 2018, prior to any City Council action that establishes the initial bargaining position of the City to meet and confer with recognized employee organizations or bargaining groups which include increases to salaries and benefits for any City officer or employee, in any proposed Memorandum of Understanding or other agreement, the Retirement System shall prepare and submit to the Mayor and City Council an actuarial study that identifies and discloses the impact on the City's Defined Benefit Pension Plan of any increases in proposed compensation or benefits contained in the initial Council proposal, and certifies whether the proposed action increases the average or mean Base Compensation, for any job classification. Prior to any submission of a tentative agreement with any recognized employee organization or bargaining group to the City Council for approval of a Memorandum of Understanding, the City shall refer the tentative agreement to the Retirement System's Actuary to update the actuarial study to include any additional fiscal impacts of the tentative agreement. Such analysis shall be made readily available to the public ten days prior to any final action taken by the Council.

Nothing in this section shall be interpreted to limit the ability of the City to offer additional compensation for City officers and employees during the effective period of this section, provided however that such compensation shall not have the effect of increasing the Base Compensation for Establishment of Pension Benefits for that City officer or employee without complying with the requirements of this section.

Nothing in this section shall be interpreted to limit the ability of the City to exercise authority under Charter Section 124 (Promotions). This section shall be implemented in a manner consistent with the requirements of any applicable labor relations laws. This Charter Section 70.2 shall be automatically repealed and removed from this Charter on July 1, 2018, unless extended, modified or repealed by a vote of the People.
(Addition voted 06-05-2012; effective 07-20-2012.)

Section 71: Preparation and Passage of Annual Appropriation Ordinance

Upon receipt of the Manager's estimate the Council shall prepare an appropriation ordinance using such estimate as a basis. The form, arrangement and itemization of the appropriation ordinance shall be determined and prescribed by the Auditor and Comptroller, and City Attorney. Provision shall be made by the Council for a minimum of two (2) public hearings upon the appropriation ordinance either before a Committee of the Council or before the Council sitting as a committee of the whole. Following the public hearings the appropriation ordinances shall take the same course in the Council as other ordinances and shall be adopted during the month of July. The Council may reduce

or eliminate any new item, may increase any amount or add any item for personal services, contractual services, materials, supplies, and equipment for any Department. However, the appropriation for the general operations of the City excluding water utilities funds, capital improvements, bond interest and redemption, retirement system contributions, grant funded programs, all other special funds in existence prior to the effective date of this section and expenditures to pay judgments or extraordinary claims or to defray the cost of emergency measures as defined in Section 17 of this Charter shall not exceed the prior year's appropriation for general operations of the City, with the stated exclusions, adjusted by no more than three quarters (3/4) of the percentage change in the price index added to any percentage increase in population growth. For purposes of this limitation, the term "percentage change in price index" shall be the percentage change from the first full quarter of the prior calendar year to the first full quarter of the current calendar year in the costs of goods and services purchased by local governments, as determined by the City Auditor and Comptroller from information published by United States Department of Commerce or other official government sources. The term "percentage increase in population growth" shall be any percentage increase from the first full quarter of the prior calendar year to the first full quarter of the current calendar year in the total population of the City as estimated by the Planning Director. This limitation shall not apply to any expenditure approved by a majority of the qualified electors of the City voting at a general or special election subsequent to the effective date of this section. In the event that the revenues for the general operations of the City, with the stated exclusions, exceed the appropriation for such operations by more than 5%, such excess shall be used solely for tax reductions or tax refunds in a manner determined by the City Council. Upon final passage, the appropriation ordinance shall be published in the manner provided for the publication of other ordinances.
(Amendment voted 11-06-1962; effective 01-21-1963.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 11-07-1978; effective 01-12-1979.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

Section 71a: Reappropriations at Beginning of Fiscal Year for Salaries and Maintenance and Support Expenses

If at the beginning of any fiscal year the appropriations necessary for the support of the various City offices, departments, services or institutions for such fiscal year shall not have been made, the several amounts appropriated in the Annual Appropriation Ordinance for the preceding year for the objects and purposes therein specified, so far as the same shall relate to salaries and wages and maintenance and support expenses, shall be deemed to be reappropriated for the several objects and purposes specified in said previous year's Annual Appropriation Ordinance until the Council shall adopt the Annual

Charter section 90.1

(d) call the election and fix the election date;

(e) fix the manner of holding the election;

(f) fix the manner of voting for or against the issuance of the bonds.

In all particulars not stated in said ordinance the election shall be held and the votes canvassed in the manner provided by law for general municipal elections in the City.

Any special election called for the purpose of voting upon a proposition of issuing bonds under this section may be consolidated with any municipal primary election or any general City election or any other election at which all of the qualified voters residing within the City are entitled to vote. Such consolidation may be made in any manner authorized under the Elections Code of the State of California or under the Elections Code of the City.

The ordinance shall be published once a week for two succeeding weeks in the official newspaper of the City, the first publication to be at least 21 days prior to the election. No other notice of such election need be given. If a majority of the voters voting on the proposition of issuing the bonds vote in favor of the issuance thereof bonds in an amount not exceeding the amount stated in the ordinance calling the election may be issued.

No error, irregularity or omission in the election or in any of the proceedings prior thereto which does not affect the substantial rights of the electors of the City or the voters voting at the election at which any revenue bonds are authorized under this section shall invalidate the election.

Subdivision 5.

(a) The Council may issue all bonds authorized at an election or all bonds authorized under paragraph (a) of subdivision 4 of this section in one issue or may divide the principal amount thereof into two or more series and fix different dates of issuance and maturities for the bonds of each series. The Council shall provide for any issue or series of bonds (if issued in series) by ordinance. The Council shall in said ordinance fix the date of issuance and the dates of maturity of each issue or series of bonds; provided, however, that no bond shall run more than 40 years from its date. Any ordinance providing for the issuance of bonds hereunder shall recite the objects and purposes for which the bonds are to be issued, the principal amount of the bonds to be issued pursuant to such ordinance, and the

Charter section 90.2

City Manager. Any such resolution also shall state generally the purposes of the proposed revenue bond issue and the principal amount thereof and in the event such resolution is adopted the recommendation of the City Manager shall not be required and the ordinance shall find the need for the issuance of revenue bonds under this section for the purposes stated in the resolution and the purposes stated in the proposition submitted to the qualified voters of the city shall be the purposes stated in such resolution. In the event the Council adopts a resolution to proceed without the recommendation by the City Manager, the ordinance calling the election may be adopted only by a vote of at least two-thirds of the members of the Council and at a meeting subsequent to that at which the resolution was adopted.

Subdivision A. The ordinance calling the election also shall:

(1) state the purposes for which the bonds are proposed to be issued;

(2) state the principal amount of the bonds;

(3) state the maximum rate of interest on the bonds, which shall not exceed six per cent per annum, payable semiannually;

(4) call the election and fix the election date;

(5) fix the manner of holding the election;

(6) fix the manner of voting for or against the issuance of the bonds.

In all particulars not stated in said ordinance the election shall be held and the votes canvassed in the manner provided by law for general municipal elections in the city.

Subdivision B. The proposition shall be submitted at a special election called for that purpose and any special election called for the purpose of voting upon a proposition to issue bonds under this section may be consolidated with any city or other election at which all of the qualified voters residing within the city are entitled to vote. Such consolidation may be made in the manner authorized under the Elections Code of the State of California or under the Elections Code of the city.

Subdivision C. The ordinance shall be published once a week for two succeeding weeks in the official newspaper of the city, the first publication to be at least 21 days prior to the election. No other notice of such election need be given. If a majority of the voters voting on the proposition of issuing the bonds vote in favor of the issuance thereof bonds in an amount not exceeding the amount stated in the ordinance calling the election may be issued.

(Editor's note: Supplement No. 655)
(Amendment voted 11-06-1962; effective 01-21-1963.)
(Amendment voted 09-21-1965; effective 02-10-1966.)
(Amendment voted 06-03-1980; effective 07-16-1980.)
(Amendment voted 11-06-1990; effective 02-19-1991.)
Prior Language

Section 93: Loans and Advances

The City Council may from time to time authorize the advance of moneys in the treasury as a temporary loan to any tax-supported fund, which loan shall be repaid from the first property taxes received thereafter; provided, however, that such temporary loans shall not exceed the current property taxes receivable. It shall be lawful from time to time to advance money in the General Fund to any bond fund or to use any money in the General Fund for any purpose for which a loan shall have been authorized and bonds actually voted but not yet issued and sold, and the City officials need not sell said bonds until it is necessary to repay the General Fund advances or to replenish such loan fund or funds. The credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor.
(Amendment voted 11-06-1962; effective 01-21-1963.)
Prior Language

Section 94: Contracts

In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, when the expenditure therefor shall exceed the sum established by ordinance of the City Council, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction, shall let the same to the lowest responsible and reliable bidder, not less than ten days after advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. If the cost of said public contract work is of a lesser amount than the figure established by ordinance of the City Council, the Manager may let said contract without advertising for bids, but not until the Purchasing Agent of the City shall have secured competitive prices from contractors interested, which shall be taken under consideration before said contract is let. The Council may, however, establish by ordinance an amount below which the Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without approval by Council. When such Council approval is required, the Manager's recommendation shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract.

In case of a great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster the Council may, by resolution passed by a vote of two-thirds of the members elected to the Council, determine and declare that the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed, without advertising for bids or receiving the same, to expend, or enter into a contract involving the expenditure of any sum required in such emergency, on hand in the City treasury and available for such purpose. All contracts before execution shall be approved as to form and legality by the City Attorney.

Each bidder shall furnish with his bid such security or deposit insuring the execution of the contract by him as shall be specified by the Council or as provided by general law.

For contracts exceeding $100,000.00, the Council shall require each contractor to insure the faithful performance of his contract by delivering to the City a surety bond in an amount specified by the Council, executed by a surety company authorized to do business in the State of California; provided, however, that in all contracts the Council shall require the retention of sufficient payments, under the contract to insure the protection of the City against labor or material liens.

The Council, on the recommendation of the Manager, or the Head of the Department not under the jurisdiction of the Manager, may reject any and all bids and readvertise for bids. The Council may provide that no contract shall be awarded to any person, firm or corporation if prison or alien labor is to be employed in performing such contract, or if the wage schedule for employees engaged in performing such contract is based on more than eight hours of labor per day. Any contract may be let for a gross price or on a unit basis and may provide for liquidated damages to the City for every day the contract is uncompleted beyond a specified date. It shall be competent in awarding any contract to compare bids on the basis of time completion, provided that when any award has been made in consideration, in whole or in part, of the relative time estimates of bidders for the completion of the work, the performance in accordance with such time limits shall be secured by a surety bond as hereinabove provided with adequate sureties and penalties, and provided further, that for any contract awarded solely or partially on a specified time for completion the Council shall not extend such time limits unless such extension be recommended by the Manager and the Head of the Department concerned.

No officer, whether elected or appointed, of The City of San Diego shall be or become directly or indirectly interested in, or in the performance of, any contract with or for The City of San Diego, or in the purchase or lease of any property, real or personal, belonging to or taken by said City or which shall be sold for taxes or assessments or by virtue of legal process or suit of said City. Any person willfully violating this section of the Charter shall be guilty of a misdemeanor and shall immediately forfeit his office and be thereafter forever barred and disqualified from holding any elective or appointive office in the service of the City. No officer, whether elected or appointed, shall be construed to

If at any time it shall be found that any party or parties to whom a contract has been awarded has, in presenting any bid or bids, been guilty of collusion with any party or parties in the submission of any bid or for the purpose of preventing any other bid being made, then the contracts so awarded may be declared null and void by the Council and the Council shall thereupon re-advertise for new bids for said work or the incomplete portion thereof. The Council shall debar from future bidding all persons or firms found to be in violation of this Section, or any future firm in which such person is financially interested.

Section 98: Alteration in Contracts

Whenever it becomes necessary in the opinion of the City Manager to make alterations in any contract entered into by the City, such alterations shall be made only when authorized by the Council upon written recommendation of the Manager, whenever the cost of such alterations increases the amount of the contract by more than the amount authorized by ordinance passed by the Council. No such alterations, the cost which exceeds the amount authorized by ordinance, shall be valid unless the new price to be paid for any supplies, materials, or work under the altered contract shall have been agreed upon in writing and signed by the contractor and the Manager prior to such authorization by the Council. All other alterations shall be made by agreement in writing between the contractor and the Manager.
(Amendment voted 06-07-1966; effective 06-29-1966.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
Prior Language

Section 99: Continuing Contracts

The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when the qualified electors of the City, voting at an election for that purpose have indicated their assent as then required by the Constitution of the State of California, such proposition shall be deemed adopted. No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds'

majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 06-04-1968; effective 07-22-1968.)
Prior Language

Section 99.1: Sports Stadium

For the purpose of acquiring, constructing and completing on a site in Mission Valley not to exceed 200 acres and lying westerly of Murphy Canyon Road, northerly of Highway 80 and southerly of Friars Road, and maintaining and operating thereon a coliseum, stadium, sports arena, sports pavilion or other building, or combination thereof, and facilities and appurtenances necessary or convenient therefor, for holding sports events, athletic contests, contests of skill, exhibitions and spectacles and other public meetings, the City may, in addition to other legal methods, enter into contracts, leases or other agreements not to exceed fifty years with any other public agency or agencies, and the provisions of Sections 80 and 99 of this Charter shall not be applicable thereto.
(Addition voted 11-02-1965; effective 02-10-1966.)

Section 100: No Favoritism in Public Contracts

No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, or material, or supplies at a higher price or rate than that proposed by any other bidder, or shall favor one bidder over another, by giving or withholding information, or shall willfully mislead any bidder in regard to the character of the material or supplies called for, or shall knowingly accept materials or supplies of a quality inferior to that called for by the contract, or shall knowingly certify to a greater amount of labor performed than has actually been performed, or to the receipt of a greater amount of material or supplies than has actually been received. Any officer or employee found guilty of violation of this Section shall forfeit his position immediately.

Section 101: When Contracts and Agreements Are Invalid

All contracts, agreements or other obligations entered into, all ordinances and resolutions passed, and orders adopted, contrary to the provisions of Sections 97 and 100 of this Article may be declared null and void by the Council and thereupon no contractor whatever shall have any claim or demand against the City thereunder, nor shall the Council or any officer of the City waive or qualify the limitations fixed by such section or fasten upon the municipality any liability whatever; provided that all persons who have heretofore furnished material for and/or performed labor on the job shall be protected by the contractor's surety bonds. Any willful violation of these Sections on contracts shall constitute malfeasance in office, and any officer or employee of the City found guilty thereof shall thereby forfeit his office or position. Any violation of these Sections, with

published in the annual report of the Auditor and Comptroller. This balance sheet shall show all convertible and other assets and all liabilities of the City.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 11-04-1958; effective 02-19-1959.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

Section 113: Official Advertising

All official advertising of The City of San Diego shall be done by contract. In June of each odd numbered year the Purchasing Agent must publish a notice in a daily newspaper of said City for ten days calling for proposals to do all the advertising of said City.

The bidder must be the responsible publisher of a newspaper in said City having a bona fide daily circulation and which has been regularly published in said City for at least two years immediately preceding his bid. The award of said advertising shall in all cases be made to the lowest responsible bidder. The newspaper to which the award of advertising is made shall be known and designated as the "City Official Newspaper." "Official advertising," within the meaning of this section shall include only such advertising as shall be required to be published by law.
(Amendment voted 04-19-1949; effective 05-20-1949.)
(Amendment voted 03-10-1953; effective 04-20-1953.)
(Amendment voted 11-08-1977; effective 01-20-1978.)
Prior Language

Section 114: Bureau of Information and Publicity

The Council may establish a bureau of information and publicity under the supervision and control of the Manager, who shall designate some official in his Department or in that of the City Clerk to compile the annual report of the City giving a summary of the Council proceedings and a summary of the operations of the administrative Departments for the previous fiscal years; have charge of the editing, printing and distribution of all municipal records, reports and documents; collect and compile information and statistics concerning all Departments and offices of the City, and other municipalities; and publish as often as necessary a City Bulletin, which shall contain the transactions and proceedings of the Council, the legal advertising of the City and such other information relating to the affairs of the City as shall be determined by ordinance or as the Manager may designate. The City Bulletin shall be published in lieu of the awarding of a contract for publication of official advertising in a newspaper of the City when the Council shall determine that it is to the best advantage of the City. The City Bulletin shall be

published, distributed or sold in such manner and on such terms as the Council may determine. No unofficial advertising shall be published in the City Bulletin, nor shall the City Bulletin be used to promote the candidacy of any person, or be used as a medium for any personal controversy.

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-06-1979; effective 12-17-1979.)
(Amendment voted 11-07-2006; effective 12-13-2006.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
(Amendment voted 11-02-2010; effective 12-22-2010.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

Section 118: Rules

The Civil Service Commission shall recommend to the City Council all rules and amendments thereto for the government, supervision and control of the classified service. No rule or amendment thereto shall become effective until it shall have been adopted by ordinance after a public hearing thereon, with notice of such hearing first given by publication of such rule or amendment thereto in full once in the official newspaper of the City at least ten (10) days prior to said hearing and by posting of such rule or amendment thereto in full in three public places at least ten (10) days prior to the said hearing thereon. Following such public hearing the City Council may adopt the rule or amendment as recommended by the Civil Service Commission, may amend the same, or may reject the said recommendation. Any rule or amendment thereto adopted by ordinance shall have the force and effect of law.

Pending the adoption by ordinance of Civil Service rules as hereinabove provided, the present Civil Service rules shall remain in full force and effect for a period not to exceed ninety (90) days from the effective date of this section.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 11-08-1949; effective 12-20-1949.)
Prior Language

Section 119: Application Register
(Repeal voted 09-21-1965; effective 02-10-1966.)
Prior Language

Section 120: Limitations and Credits

No question in any test shall relate to race, or to political or religious opinions, affiliations or service, and no appointment, transfer, layoff, promotion, reduction, suspension or removal shall be affected or influenced by race or such opinions, affiliations or service. In all original examinations, the Civil Service Commission shall in addition to all other credits, give a credit of five per cent of the total credits specified for such examinations to all those who have attained a passing grade in the examination and

Attachment C

Rule 9: TEMPORARY RULES

The Council President may, at any time, place on the Adoption Agenda a resolution establishing a temporary rule. Upon adoption by the Council, the temporary rule shall have the effect, for the time being, of a standing rule. If such temporary rule is in conflict with a permanent rule, it shall supersede such permanent rule only for the day on which it was adopted or for such greater period as may be specified in the temporary rule.

Rule 10: AMENDMENT OF PERMANENT RULES

No Permanent Rule of the Council shall be amended except by ordinance adopted by the Council. No such ordinance shall be considered by the Council until it has been referred to the standing committee chaired by the Council President.

Rule 11: EXISTING PROCEDURES PRESERVED

The procedures of the Council contained in the Council Policy Manual shall be continued in full force and effect.

(Amended 6-21-2011 by O-20066 N.S.; effective 7-21-2011.)
(Amended 11-1-2011 by O-20109 N.S.; effective 12-1-2011.)
(Amended 1-10-2012 by O-20121 N.S.; effective 2-9-2012.)
(Amended 1-8-2013 by O-20242 N.S.; effective 2-7-2013.)
(Amended 11-28-2013 by O-20316 N.S.; effective 11-28-2013.)
(Amended 1-13-2015 by O-20452 and O-20453 N.S.; effective 2-12-2015.)

§22.0102 Publication of Ordinances or Resolutions

Within fifteen (15) days after final passage of any ordinance or resolution of a general nature, the City Clerk shall cause the same to be published once in the "City Official Newspaper" as defined by Section 113 of the Charter; provided, however, that when any ordinance or resolution is, by the City Charter, or by any general law, the provisions of which have been adopted by the Charter, required to be published more than once, the City Clerk shall cause such ordinance or resolution to be published in the manner and as often as is so required.
(Amended 4–17–1989 by O–17277 N.S)

(g) The *Director* shall refund a deposit paid or collected in error.

(h) If a Building Permit or Demolition/Removal Permit, for which a deposit has been paid, is subsequently cancelled, abandoned or expires before work on the *development* has commenced, the *Director* shall refund the deposit paid by the *applicant* upon the *applicant's* submittal to the *Director* of satisfactory proof of the cancellation, abandonment or expiration of the permit.

(i) The *Director* shall issue the refund to the *applicant* within the time established by City Council resolution.

(j) In no event shall the refund be in an amount greater than the deposit paid by the *applicant*.

(Added 10-10-2005 by O–19420 N.S; effective 1-17-2008.)
(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)
(Amended 1-30-2014 by O-20341 N.S.; effective 3-1-2014.)

§66.0607 Certified Recycling Facilities

(a) After at least one public hearing, the *Director* shall establish rules and regulations for certifying facilities inside or outside the City for purposes of this Division including, but not limited to, criteria for determining the *diversion* rate achieved by the facility and for verifying that the facility has obtained all applicable permits and licenses. The *Director* shall publish in the official City newspaper a notice of the adoption or amendment of these rules and regulations. The *Director* shall certify facilities in accordance with those rules and regulations.

(b) Within ten working days after publication of the notice adopting the proposed rules and regulations pursuant to Section 66.0607(a), any person in disagreement with the proposed rules and regulations may request in writing to the *Director* that proposed rules and regulations be considered by the City Manager or designee. The proposed rules and regulations shall be considered by the City Manager or designee, who shall issue a written decision respecting the proposed rules and regulations within thirty days of the *Director's* receipt of the written request. The decision of the City Manager or designee with respect to the rules and regulations shall be final.

(Added 10-10-2005 by O–19420 N.S; effective 1-17-2008.)
(Amended 12-18-2007 by O-19694 N.S; effective 1-17-2008.)

§64.0519 Records Retention

All permittees subject to this division of this ordinance shall retain and preserve for not less than three (3) years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or on behalf of a permittee in connection with its discharge. All records which pertain to matters which are the subject of administrative action or any other enforcement or litigation activities brought by the City shall be retained and preserved by the permittee until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.
("Records Retention" added 6–6–1983 by O–15984 N.S.)

§64.0520 Publication of Industrial Users in Significant Noncompliance

The City Manager shall publish annually, in the largest daily newspaper published in San Diego, a list of the users which, during the previous calendar year, were in significant noncompliance [SNC] with applicable pretreatment standards and requirements.
(Added 11-14-2000 by O-18880 N.S.)

§44.0321 Domestic Animals — Methods of Disposal — Auction

Whenever the Poundmaster shall discover, or be notified by any persons that any such animal is grazing or pasturing or running at large or is picketed or staked out so as to permit it to cross or trespass upon the lands of adjoining owners, or upon any traveled street or sidewalk, or is improperly cared for in violation of this article, it shall be his duty and he is hereby directed to immediately take said animal and impound it in the City Pound. Within twenty–four (24) hours thereafter, unless said animal be claimed, he shall, in his discretion, dispose of the animal in accordance with Section 44.0313(d), or he shall notify, by registered mail, the owner or reputed owner, if the name and address of such owner or reputed owner be known to him, and shall cause a notice to be posted in each of three (3) conspicuous public places in The City of San Diego, and shall likewise publish for three (3) consecutive days in the official newspaper of the City, a notice describing such animal so impounded, giving marks or brands, or other distinguishing points thereof, and fixing an hour, date, and place for public auction thereof, which date shall be not less than five (5) nor more than ten (10) days after the first publication of such notice.

Unless the owner thereof comes and claims the same prior to sale thereof and proves ownership of said animal and pays all lawful charges thereon, as hereinafter provided, said Poundmaster is hereby authorized and it is his duty to expose said animals for sale at public auction at the time and place fixed in said notice to the highest bidder for cash. All proceeds of such sale, together with all fines, charges, fees and other expense chargeable against said animal, according to the schedule of charges hereinafter specified, shall be delivered to the Treasurer of The City of San Diego, together with a full description of the animal sold as aforesaid, and said Poundmaster shall deliver to the purchaser of any animal sold as aforesaid, a bill of sale therefor, which shall vest title to said animal in the purchaser.

In the event the animal is not claimed by the owner, and there are no bidders at the aforesaid sale, the owner's interest in said animal shall be foreclosed; and the Poundmaster may dispose of said animal by any method provided for by Section 44.0313.
(Renumbered from Sec. 44.31.3 on 2–10–1953 by O–5486 N.S.)

§44.0341 Rat Control — Premises shall be Rat–Proof and Free of Rats

It shall be unlawful for any person within the corporate limits of the City of San Diego to construct, maintain, operate, or permit to exist any building or other structure or premises wholly or partly in his possession or under his control, which is not rat–proof and free of rats in accordance with the provisions of this Article.
(Renumbered from Sec. 46.01 on 2–10–1953 by O–5486 N.S.)

Article 2: Required Steps in Processing

Division 3: Notice

("Notice" added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0301 Types of Notice

(a) Notice of Application. A Notice of Application is required for an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, Process Five, or Process CIP-Five.

(1) Content. The Notice of Application shall include the following information:

(A) A general description of the proposed *development* including, when applicable, the type of permit, project name, square footage of proposed construction, and the number of proposed residential units;

(B) The location and size of the property that is the subject of the application;

(C) The community planning area in which the proposed *development* is located and the name of the contact person, if any, designated by the officially recognized community planning group;

(D) The name and telephone number of the City staff person to contact for additional information; and

(E) The name of the *applicant* and, with the consent of the *applicant*, the applicant's address and telephone number.

(2) Distribution. The City Manager shall mail the Notice of Application to the persons described in Section 112.0302(b), no later than 10 *business days* after the date on which the application is *deemed complete*. The *applicant* shall post the Notice of Application on the property that is the subject of the application in accordance with Section 112.0304.

(b) Notice of Future Decision. A Notice of Future Decision shall be provided for an application for a permit or other matter acted upon in accordance with Process Two or Process CIP-Two.

(1) Content. The Notice of Future Decision shall include the following information:

(A) A general description of the proposed *development* including, when applicable, the type of permit, project name, square footage of proposed construction, and number of proposed residential units;

(B) The location and size of the property that is the subject of the application;

(C) A statement that the project is exempt from CEQA (California Environmental Quality Act) or is undergoing preliminary environmental review;

(D) The community planning area in which the proposed *development* is located and the name of the contact person, if any, designated by the officially recognized community planning group;

(E) The name, telephone number, and city address of the City staff person to contact for additional information;

(F) The name of the *applicant* and, with the consent of the *applicant*, the applicant's address and telephone number;

(G) An explanation that the decision to approve, conditionally approve, or deny the proposed *development* will be made by City staff, without a public hearing, and that the *decision date* will not be less than 11 *business days* after the date of mailing the Notice of Future Decision to allow for sufficient time for public comment;

(H) A statement that any requests for notification of the staff's decision must be received by the City no later than 10 *business days* after the date on which Notice of Future Decision is mailed; and

(I) An explanation of the process to appeal the decision.

(2) Distribution. The City staff person approving, conditionally approving, or denying an application for a permit or other matter shall mail a Notice of Future Decision to the persons described in Section 112.0302(b) no later than 10 *business days* after the date on which the application is *deemed complete* in accordance with 12.0102(b). The *applicant* shall post the Notice of Future Decision on the property that is the subject of the application in accordance with Section 112.0304.

(c) Notice of Public Hearing. A Notice of Public Hearing shall be provided before a decision is made on an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, Process Five, or Process CIP-Five, or an appeal of a Process Two, Process CIP-Two, Process Three, or Process Four decision, or of an *environmental* determination. A Notice of Public Hearing shall also be provided before a decision is made by the City Council in accordance with Section 132.1555 (Overrule Process).

(1) Content. Except as set forth in Section 112.0301(c)(2), the Notice of Public Hearing shall include the following information:

(A) The general subject of the public hearing including the type of *development permit* and the name of the proposed *development*.

(B) The location and size of the property that is the subject of the application.

(C) The community planning area in which the proposed *development* is located.

(D) A general description of the proposed *development*, including the square footage of proposed commercial or industrial uses and the proposed number of dwelling units.

(E) The name of the *applicant* and, with the consent of the *applicant*, the applicant's address and telephone number.

(F) The identity of the decision maker holding the public hearing.

(G) The date, time, and place of the public hearing.

(H) A brief description of the general procedures concerning the conduct of hearing and local actions and the procedure and requirements for filing an appeal. For Process Three or Process Four public hearings, the definition of an *interested person* for purposes of appeal.

(I) The name and telephone number of the City staff person to contact for additional information.

(2) The Notice of Public Hearing for an appeal of an *environmental determination* shall include the following information:

(A) The general subject of the public hearing, including the type of *environmental determination* and the name of the proposed *development*.

(B) The location and size of the *premises* that is the subject of the application.

(C) The community planning area in which the proposed *development* associated with the *environmental determination* is located.

(D) The name of the *applicant* and, with the consent of the *applicant*, the *applicant*'s address and telephone number.

(E) The decision-maker will be the City Council.

(F) The date, time, and place of the public hearing.

(G) A brief description of the general procedures concerning the conduct of hearing and local actions.

(H) The name and telephone number of the City staff person to contact for additional information.

(3) Distribution. Except as otherwise provided by the Municipal Code, the City Manager shall publish the Notice of Public Hearing in accordance with section 112.0303, and shall mail the Notice of Public Hearing to the persons described in section 112.0302(b), at least 10 *business days* before the date of the public hearing.

(d) Reserved Notice of Availability.

(e) Notice of Request for Airport Land Use Compatibility Overrule Hearing. A Notice of Request for Airport Land Use Compatibility Overrule Hearing is a written notice to advise of the availability of supporting materials for an overrule action requested in accordance with Section 132.1555 that will be acted on by the City Council at a future date.

(1) Content. The Notice of Request for Airport Land Use Compatibility Overrule Hearing shall include the following:

(A) A general description of the project;

(B) The location of the property that is the subject of the application;

(C) The applicable community planning area(s);

(D) The name, telephone number, and city address of the City staff person to contact for additional information;

(E) The name of the *applicant* and, with the consent of the *applicant*, the *applicant's* address and telephone number; and

(F) An explanation that a City Council hearing related to the matter of whether to overrule the Airport Land Use Commission in accordance with Section 132.1555(e) will be scheduled no sooner than 6 weeks following the mailing date of the Notice of Request for Airport Land Use Compatibility Overrule hearing.

(2) Distribution.

(A) The City Manager shall distribute the Notice of Request for Airport Land Use Compatibility Overrule Hearing at least 6 weeks prior to the first City Council hearing related to the matter of whether to overrule the Airport Land Use Commission.

(B) The City Manager shall distribute the Notice of Request for Airport Land Use Compatibility Overrule Hearing to the persons described in Section 112.0302(b).

(3) A subsequent Notice of Public Hearing shall be provided in accordance with Section 112.0301(c).

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)
(Amended 7-26-2004 by O-19303N.S.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)
(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)

§112.0302 Notice by Mail

(a) General Provisions. When the Land Development Code requires a Notice of Application, Notice of Future Decision, Notice of Public Hearing, or other mailed notice, the notice shall be postage prepaid and addressed to the persons identified in Section 112.0302(b). Notice by mail shall be considered complete at the time of deposit in the United States Mail.

(b) Persons Entitled to Notice. Except as provided in Section 112.0302(c), the Notice of Application, Notice of Future Decision, and Notice of Public Hearing shall be mailed to the following:

(1) The *applicant*;

(2) All tenant addresses located on the subject property and all addresses within 300 feet of the boundary of the real property that is the subject of the application, including each tenant address within a condominium or apartment complex.

(3) The owners of any real property, as shown on the latest equalized property tax assessment roll of the San Diego County Assessor, located within 300 feet of the boundary of the property that is the subject of the application;

(4) The officially recognized community planning group, if any, that represents the area in which the proposed *development* is located, and officially recognized community planning groups that represent the area within 300 feet of the location of the proposed *development*; and

(5) Any person who has submitted a written request for notification of the proposed *development* to the City staff person named in the Notice of Future Decision.

(6) The San Diego County Regional Airport Authority (SDCRAA), sitting as the Airport Land Use Commission, California Department of Transportation, Division of Aeronautics, and the airport operator, as applicable, for any *development* within the Airport Land Use Compatibility Overlay Zone.

(c) Alternative to Mailed Notice. If the number of tenants and owners to whom notice would be mailed in accordance with Section 112.0302(b) is greater than 1,000, notice may be given by placing a display advertisement of at least one-eighth page in a newspaper of general daily circulation within the City in lieu of mailing, unless the noticing is required for a Coastal Development Permit.

(d) Notice Address

(1) A notice to the *applicant* shall be mailed to the address shown on the application or as indicated on a written change of address form filed by the *applicant* with the City.

(2) A notice to each owner of real property located within 300 feet of the property that is the subject of the application shall be mailed to the record owner.

(3) A notice mailed to a tenant address shall be addressed "Tenant".

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

§112.0303 Published Notice

When the Land Development Code requires a Notice of Public Hearing to be published, the City shall submit the Notice of Public Hearing for publication in at least one newspaper of general daily circulation within the City. A published notice is effective on the date of publication.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0304 Posted Notice

When this division requires a Notice of Application or a Notice of Future Decision to be posted, the *applicant* shall post the notice in the following manner.

(a) Placement of Notice. The *applicant* shall post copies of the Notice of Application or Notice of Future Decision along the *street frontage* of the property that is the subject of the application. The notices shall not be spaced more than 200 feet apart. No more than three notices are required for any property. If the *street frontage* is less than 200 feet, only one notice is required.

(b) Verification of Posting. The *applicant* shall verify in writing, on a form prescribed by the City, that the notice has been posted in accordance with this section, within 5 *business days* of the date on which the *applicant* receives the notice from the City.

(c) Error in Posting. The posting required by this section is intended only to supplement other notice requirements of this division. A decision on an application for a permit, map, or other matter shall not be invalidated because of any error or irregularity in the posting of a notice in accordance with this section.

(d) Maintaining Posted Notices. It is unlawful to deface, damage, move, or remove a notice posted in accordance with the applicable provisions of the Municipal Code.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§112.0305 Notice for Land Use Plans or Zoning Ordinances

When a *land use plan*, a zoning ordinance, or a rezoning ordinance is to be considered at a public hearing, the City Manager shall submit a Notice of Public Hearing for publication as set forth in Section 112.0303 to be published at least 10 *business days* before the date of the public hearing. The Notice of Public Hearing shall include the date, time, and place of the hearing, the identity of the hearing body, a general explanation of the matter to be considered, and a general description of the location of the real property, if any, that is the subject of the hearing. This notice shall be provided in addition to the other notices required by this division.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

§112.0306 Notice for Coastal Development Permits

All notices for a Coastal Development Permit shall include a statement that the *development* is within the Coastal Overlay Zone, the date of filing of the application and the number assigned to the application. When a Coastal Development Permit is to be considered under Process Two, Process CIP-Two, or at a public hearing, the City Manager shall mail a Notice of Future Decision or Notice of Public Hearing to the California Coastal Commission and all persons requesting notice on Coastal Development Permits. This notice shall be provided in addition to the other notices required by this division. Notices for appealable Coastal Development Permits shall include provisions for appeals to the California Coastal Commission.
(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)
(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)

§112.0307 Notice for Local Coastal Programs and Implementing Ordinances

(a) When a *Local Coastal Program* amendment or an implementing ordinance for the *Local Coastal Program* is to be considered at a public hearing, the City Manager shall mail a Notice of Public Hearing to the persons and agencies required by California Coastal Commission regulations, at least 10 *business days* before the date of the public hearing. The City Manager shall also submit a Notice of Public Hearing for publication as set forth in Section 112.0303 to be published at least 10 *business days* before the date of the public hearing.

(b) When a *Local Coastal Program* amendment is to be considered at a public hearing in connection with a proposed *development*, the City Manager shall also mail a Notice of Public Hearing to the persons identified in Section 112.0302(b).

(c) Notice of availability of a Local Coastal Program amendment shall be provided in accordance with Section 112.0301(d).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

§112.0308 Notice for Appeal Hearings

The notice for appeal hearings of Process Two, Process Three, Process Four, or Process CIP-Two decisions, or of an *environmental determination* shall be provided in accordance with sections 112.0301(c), 112.0302, and 112.0303.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 7-26-2004 by O-19303 N.S.)
(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)

§112.0309 Failure to Receive Notice

The failure of any person to receive notice given in accordance with this division and the State of California Planning and Zoning Laws shall not constitute grounds for any court to invalidate any action taken by the City for which the notice was provided.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§112.0310 Notice of Right to Appeal Environmental Determination

In accordance with Chapter 12, Article 8, Division 2, the Planning Director implements the California Environmental Quality Act (CEQA) and the State CEQA Guidelines within the City of San Diego. While not required by CEQA, in some circumstances the City requires the posting of a Notice of Right to Appeal Environmental Determination for activities that are subject to CEQA.

(a) A Notice of Right to Appeal Environmental Determination shall be posted for an *environmental determination* for the following:

(1) A determination that a project is exempt from CEQA pursuant to a categorical exemption, that an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, or is exempt pursuant to State CEQA Guidelines Article 12.5 in accordance with State CEQA Guidelines Sections 15061(b)(2), 15061(b)(3), or 15061(b)(5);

(2) A determination that a project is exempt from CEQA pursuant to a statutory exemption, e.g. CEQA Guidelines 15061(b)(1); and

(3) A decision to adopt or certify an environmental document that the City Manager approves or decides to carry out without a public hearing in accordance with his powers under City of San Diego Charter Section 28, including environmental documents for projects decided in accordance with Process Two.

(b) A Notice of Right to Appeal Environmental Determination is not required to be posted for the following:

(1) Activities that are not subject to CEQA pursuant to CEQA Guidelines Section 15060(c) and 15061(b)(4);

(2) Projects with an environmental document subject to a Hearing Officer or Planning Commission action to adopt or certify; and

(3) Projects with an environmental document or an exemption determination subject to City Council approval.

(c) A Notice of Right to Appeal Environmental Determination shall include:

(1) An identification of the project, including its common name where possible and its location;

(2) A brief description of the project;

(3) A statement regarding the type of *environmental determination*;

(4) A brief statement to support the reasons for the *environmental determination*, including citation to applicable State CEQA Guidelines or statutes; and

(5) The date the Notice of Right to Appeal Environmental Determination is posted and the time for filing an appeal in accordance with Section 112.0520(b).

(d) A Notice of Right to Appeal Environmental Determination shall be posted on the date of the *environmental determination* as follows:

(1) At the City of San Diego, Development Services Department in a location easily accessible to the public; and

(2) On the City of San Diego's website.

(e) A Notice of Right to Appeal Environmental Determination shall be distributed via electronic mail (or by U.S. mail if electronic mail is unavailable) on the date of the *environmental determination* as follows:

(1) To the Council Office for the Council District in which the proposed project is located;

(2) To the officially recognized community planning group, if any, that represents the area in which the proposed project is located; and

(3) To any person who has submitted a written request for notification of the proposed *development* to the City staff person named in the Notice of Future Decision.

(f) A Notice of Right to Appeal Environmental Determination posted in accordance with Section 112.0310(d) shall remain posted for 10 *business days.*

(Added 7-26-2004 by O-19303 N.S.)
(Amended 2-12-2014 by O-20348 N.S.; effective 3-14-2014.)

§27.0110 Precinct Boards

The precinct boards shall be those established by the *Registrar* pursuant to *election* laws of the State of California.
("Precinct Boards" renumbered from Sec. 27.2007 and amended 7-26-1999 by O-18664 N.S.)

§27.0111 Delegation of Duties

The City *Clerk* may delegate to the *Registrar* those duties assigned to the City *Clerk* by this article which can more properly be performed by the *Registrar*.
("Delegation of Duties" renumbered from Sec. 27.2014 and amended 7-26-1999 by O-18664 N.S.)

§27.0112 Delegation of Authority to Deputy

Any duty under state law or this municipal code required to be performed by the City *Clerk* may be performed by an authorized deputy of the City *Clerk* or by an individual authorized by the City *Clerk*.
("Delegation of Authority to Deputy" added 7-26-1999 by O-18664 N.S.)

§27.0113 Retention of Documents

All papers and documents relating to *elections* that are maintained by the City *Clerk* may be destroyed in accordance with the City *Clerk's* Records Disposition Schedule, if designated in that schedule, or two years after the date on which they were filed or received or created, whichever is later. This section does not apply to the destruction of official ballots.
("Retention of Documents" renumbered from Sec. 27.2017 and amended 7-26-1999 by O-18664 N.S.)

§27.0114 Invalidity of Petition

No *petition* is valid for use in connection with any *election* held after the *election* for which the *petition* was circulated.
("Invalidity of Petition" renumbered from Sec. 27.2018 and amended 7-26-1999 by O-18664 N.S.)

§27.0115 Publication

(a) The City *Clerk* shall publish at least once in the official City newspaper:

(1) Ordinances calling *elections*, or digests of the ordinances, which publication shall constitute the Notice of *Election*; and

(2) Resolutions declaring the results of *elections*.

(b) No other publication is required.
("Publications" renumbered from Sec. 27.2019, retitled to "Publication" and amended 7-26-1999 by O-18664 N.S.)

§27.0116 Term of Office

The term of office for officers elected pursuant to this article at a *District* or *City-wide Primary Election*, or at a *District* or *City-wide General Election*, shall be four years. The term of office shall commence at 10:00 a.m. (local time) on the first Monday after the first calendar day in December following the *elective officers' election* or upon taking their oath of office, whichever occurs later. It shall expire at 10:00 a.m. (local time) on the first Monday after the first calendar day in December of the term's fourth year.
("Term of Office" renumbered from Sec. 27.2020 and amended 7-26-1999 by O-18664 N.S.)

§27.0117 Map of Council Districts

The City *Clerk* shall maintain a current map of the City showing the boundaries of each City *Council* district as most recently established by ordinances of the City *Council*.
("Councilmanic Districts" renumbered from Sec. 27.2021, retitled to "Map of Council Districts" and amended 7-26-1999 by O-18664 N.S.)

§27.0118 Redistricting

No change in the boundaries of City *Council* districts shall affect the term of office of any City Councilmember who has been elected and whose term has not expired at the time of the change.
("Redistricting" renumbered from Sec. 27.2022 and amended 7-26-1999 by O-18664 N.S.)

§27.0119 Residency Requirements of Candidates and Elective Officers

The residency requirements for *elective officers* set forth in Section 7 of the Charter of The City of San Diego having been impliedly rendered invalid by *Johnson v. Hamilton*, 15 Cal. 3d 461 (1975), the following shall apply:

Attachment D

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: March 16, 2009

TO: Elizabeth Maland, City Clerk

FROM: City Attorney

SUBJECT: Requirement to Publish Amendments to the Annual Appropriation Ordinance

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INTRODUCTION

The City occasionally amends its annual Appropriation Ordinance during a fiscal year, usually to permit reallocation of funds to meet the City's budgetary needs. The City Clerk has asked whether the ordinances amending the annual Appropriation Ordinance must be published. For reasons explained in more detail below, this Office concludes that such ordinances amending the annual Appropriation Ordinance should be published in the same manner as the annual ordinance.

ANALYSIS

San Diego is a charter city under the California Constitution, permitting it to "make and enforce all ordinances and regulations in respect to municipal affairs" subject only to its charter's restrictions and limitations. Cal. Const. art 11, § 5. It is well established that the manner and mode of enacting a municipal ordinance is a municipal affair. *Brougher v. Board of Public Works*, 205 Cal. 426, 438-439 (1928); *Adler v. City Council of City of Culver City*, 184 Cal. App. 2d 763, 768 n.1 (1960). Accordingly, our City Charter and Municipal Code govern the requirements for validly enacted City ordinances.

Charter section 71, entitled "Preparation and Passage of Annual Appropriation Ordinance" provides that "[u]pon final passage, the appropriation ordinance shall be published in the manner provided for the publication of other ordinances." The Charter also contemplates changes to the annual ordinance during a current fiscal year. Charter § 73. Generally speaking, such changes (amendments) to an ordinance may be accomplished only by another ordinance. 6 McQuillin Mun. Corp. § 21:4 (3rd ed. 2008). The Charter does not expressly require that ordinances amending the annual Appropriation Ordinance be published. However, it is reasonable to

conclude that the same procedural rules that apply to enactment of the annual Appropriation Ordinance apply to an ordinance amending it.

Charter section 18 governs the publication of other City ordinances. It provides that "[w]ithin fifteen days after final passage the title and number of each ordinance . . . of a general nature, together with a digest thereof prepared by the City Attorney, shall be published at least once in such manner as may be provided by this Charter or by ordinance." San Diego Municipal Code section 22.0102 provides that "the City Clerk shall cause to be published" in the official city newspaper all ordinances of a general nature within fifteen days of their final passage.

The Charter and Municipal Code sections use the word "shall" to describe the Clerk's duty to publish these ordinances. "Shall" implies a mandatory duty. However, when the charter or other applicable law does not make the publication of an ordinance a precondition to its effectiveness, California courts do not find them to be ineffective simply because they have not been published. Absent a precondition that publication is necessary before the ordinance takes effect, a requirement for post-enactment publication is considered to be a ministerial task and "directory" only. *Sacramento v. Dillman,* 102 Cal. 107, 111 (1894); *also see* 5 McQuillin Mun. Corp. § 16:77 (3rd ed. 2008).

This general rule was found applicable to the San Diego City Charter's publication requirements for ordinances in *Hollander v. Denton,* 69 Cal. App. 2d 348 (1945). Mr. Hollander sued Mr. Denton, claiming he had unlawfully lowered the grade of the street. Mr. Denton provided certified copies of the ordinance setting the grade, resolutions permitting him to grade, and evidence of his compliance. Mr. Hollander lost at trial, and on appeal claimed the ordinance and resolutions were invalid because they had not been published as required by the City Charter.[1] The court disagreed, finding the San Diego Charter did not require the effective date of ordinances and resolutions to depend on their publication. The ordinance and resolution in the case had been lawfully enacted and took effect in accord with other Charter requirements. *Id.* 351-352. The court held that the charter requirements for publication were "merely directory." *Id.* at 351. "The ordinance and resolutions were therefore, on their face, valid without publication." *Id.* at 352. *See also, People v. Crittenden,* 93 Cal. App. 2d Supp. 871, 876 (1949).[2]

A determination that a law's provisions are "directory" or "mandatory" does not decide whether the particular requirement is "permissive" or "obligatory." It " '. . . simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating

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[1] Charter section 18 then required publication within 10 days after final passage of an ordinance. *Id.* at 351. Charter section 20 then provided that the City Council "shall cause to be printed in book form all ordinances 'of a general nature in force at the time of such publication'. . . ." *Ibid.*

[2] The *Crittenden* case involved a San Diego City ordinance requiring a City license to practice law. The court held the ordinance was properly admitted into evidence, even though there was no proof the ordinance had been published pursuant to then Charter section 20, relying on the *Denton* case holding such requirement to be merely directory. *Crittenden,* 93 Cal. App. 2d Supp. at 876.

the governmental action to which the procedural requirement relates.' " *Edwards v. Steele*, 25 Cal. 3d 406, 409 (1979), citing *Morris v. County of Marin*, 18 Cal. 3d 901, 908 (1977).

Accordingly, this Office interprets the Charter's use of the word "shall" to impose an obligation on the Clerk to publish amendments to the Annual Appropriation Ordinance. However, a failure to meet this obligation does not impair the effectiveness of those amendments under the legal principles set forth above.[3]

CONCLUSION

The City Clerk should publish amendments to the Annual Appropriation Ordinances in the same manner the Office publishes the annual ordinance.

JAN I. GOLDSMITH, City Attorney

By

Josephine A. Kiernan
Deputy City Attorney

JAK:amt
MS-2009-4

[3] We caution that this analysis applies *only* to the post-enactment publication requirements of the Annual Appropriation Ordinance and its amendments. Publication requirements for other ordinances could impact their effectiveness if the requirements are not met.

ORDINANCES

Ordinances Published with Full Roll Call	Ordinances Published with Publication Form
(See Sample #1)	(See Sample #2)
Annual Appropriation (Budget) (On original budget only) - 1 time	Amendments to Budget (Annual Appropriation) - 1 time.
Salary Ordinance - 1 time	Add to Councilmanic Districts; creating new positions-1 time
Tax Rate Ordinance - 1 time	Civil Service Rules which also amends Municipal Code-1 time
Annexations - 1 time (check with Hearings Supv.)	Municipal Code - amending, adding, etc. - 1 time
Elections, calling - 1 time	Zoning (rezoning and interim) (publish only if rezoning affects the entire community plan or a large area is affected - 1 time (check with City Attorney)
Bond Elections - (varies) Check with City Attorney	Repealing Ordinances-1 time
Land Dedicating for Public Purposes - 1 time	Redevelopment Plans (per Redevelopment Agency Policy 300-4)
T.V. Franchise - 1 time	

RESOLUTIONS

With Full Roll Call (sample #3)	With Publication Form (sample #4)
Annexations and elections (check with Supv. each time) STREET WORK: (1911, 1913 Acts) Reso. of Intention-2 times Notice Awarding contract - - 2 times STREET VACATIONS: Reso. of Intention-2 times WAGE SCALE: Reso. adopting - 1 time ELECTIONS: Declaring Results; Requesting Co. Registrar to work - 1 time UNDERGROUND UTILITY DISTRICT, LANDSCAPE MAINTENANCE DISTRICT, BUSINESS IMPROVEMENT DISTRICT: check with Hearings Supv. for the number of times and other requirements. Notice Awarding contract -	Community Plan, Land Use Plan - 1 time Schedule of Fees (seldom used) - 1 time (check with City Attorney (i.e., sewer charges, water charges/rates)

NOTICES

Notices do not require a roll call or publication form. They must all have a typed name.

STREET WORK: Notice Inviting Sealed Proposals or Bids - 2 times
Notice of Filing Assessment - 2 times
Notice Awarding Contracts - 2 times

OTHER NOTICES: Notice of Public Hearing (Zoning, Appeals, etc.) - 1 time at least 10 days before hearings.

PUBLISHING PROCEDURES

Check the Publishing Information Guide to determine if an ordinance or resolution needs to be published and if a full roll call or a publication form is to be used. To publish the resolution/ordinance in the Daily Transcript, the following steps should be followed:

1. Call the secretary to the attorney and ask her to E-mail the ordinance/resolution to you. If the resolution or ordinance is more than 1 page ask for a digest if possible.

2. When you receive the E-mail with the ordinance/resolution attached, file the attachment in your computer with the resolution/ordinance number as the file name. We will use Resolution Number R-290878 as an example throughout this procedure. To save the attachment do the following:

a. Open your E-mail from the Attorney
b. Double click on the Attachment icon
c. Click on "File - Save As"
d. Go to the "Filename" box, delete the name that is there, and type the following:
C:\Myfiles\R-290878
e. Click on the "Save" button.
f. Close and exit Word Perfect and E-mail.

3. Open the file you have just created, type in the ordinance/resolution number, and make the following changes:

a. Delete everything above the resolution/ordinance number
b. Delete adopted on and blank line below the number
c. Delete the Footer page numbers
d. If there is any reference to a map attached, delete the word "attached" and insert the words "on file in the Office of the City Clerk as Exhibit A to Resolution No. R-290878".
e. At the end of the document, delete everything below the last line of text, i.e., approved by, signature line, initials and everything else.

f. If a digest copy of the ordinance/resolution is being published, you need to type the following statement on the bottom of the document if it is not already there:

"A complete copy of the resolution/ordinance is available for inspection in the office of the City Clerk of the City of San Diego, 2nd Floor, City

Administration Building 202 C Street, San Diego, CA 92101."

g. Go to the end of your document, double space and then Click on "Insert - File" to pull in a copy of the appropriate full roll call or publication form. (Check Attachment A to see which form you will need.) Using our example of R-290878 it will be:

C:\MyFiles\Forms\Publ Full Roll Resolution

Your document is complete now and ready to save.

4. Do the following to send your E-mail to the Daily Transcript.

a. Open your E-mail and click on "File - New - Mail"

b. In the "To" box type the following address <u>in small letters</u>:

internet:sdcityads@sddt.com

c. Tab to the "Subject" box and type:

Publication of Resolution R-290878

d. Click on the "CC" box and type the name or E-mail code of the Hearings Section Publishing Deputy.

e. Type the following message:

Please run the attached legal ad(s) on <u>fill in day(s), (date(s)</u> and send the invoice to:

Hearings Publishing Deputy, MS 2A
City Clerk's Office
City of San Diego
202 "C" Street
San Diego, CA 92101

Reference Purchase Order No. 0268036. (Add any special instructions here, e.g., publish as a 1/8th page ad.) If you have any questions, please call the Publishing Deputy at 533-4014.

f. Click on "File - Attachments - Attach File"

g. In the "Look In" box scroll to C:\MyFiles, find the R-290878 file, click to highlight it, and then click on "open".

h. You should have the Mail To Screen on your computer now which shows your E-mail with an attachment icon and the name R-290878. (You can send more than 1 attachment to your E-mail by repeating steps f. and g.)

i. Click on "Send" and your E-mail will be on its way.

j. If you have not received E-mail confirmation of receipt from the Daily Transcript within a few hours, call Lou Santo Domingo at 232-4381, extension 318.

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February 8, 2016

REPORT TO CITY COUNCIL

REPEAL OF CHARTER SECTIONS PROPOSED BY THE CHARTER REVIEW COMMITTEE AND PROPOSAL FOR GENDER-NEUTRAL CHARTER LANGUAGE

INTRODUCTION

On December 7, 2015, the City Council (Council) requested legal review of the effects of repealing eleven sections and one full article of the City of San Diego Charter (Charter) recommended for repeal by the Charter Review Committee (Committee). The sections recommended for repeal listed in the December 7, 2015 Council agenda item are sections 26.1[1], 64, 71A, 76, 76.1[2], 77B, 81, 112, 114, 215, 216, and Article X. This Report discusses legal effects of each repeal and considerations for inclusion in specific ballot measures. Additionally, the Council requested that this Office determine the number of pages of the Charter that would need to be amended in order to make the Charter gender-neutral.

DISCUSSION

I. LEGAL ANALYSIS OF PROPOSED CHARTER SECTION REPEALS

Repeal of Charter section 64: Support of Education and Cultural Institutions

The Mayor's office recommended the repeal of Charter section 64 at the July 2, 2015 meeting of the Committee, stating the section is redundant of current practice. The Committee voted to repeal the section pursuant to the Mayor's recommendation.

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[1] The proposal to repeal Charter section 26.1 requested that a mandate to provide certain services be included in a new preamble to the Charter. After hearing proposals for a new preamble and legal analysis of including required services in the preamble, the Committee requested revised language for Charter section 26.1, rather than repeal. *See* City Att'y MOL No. 2016-2 (Jan. 12, 2016). Accordingly, legal effects of repealing Charter section 26.1 are not included in this Report.

[2] Repeal of Charter section 76.1 was not a part of the final proposals passed by the Committee and forwarded to the Council for its consideration. At its October 8, 2015 meeting, the Committee approved a proposal for amending the taxation portions of Article VII, retaining the language of Charter section 76.1, and not repealing, but renumbering the section as Charter section 76. Accordingly, the legal effects of repealing Charter section 76.1 are not included in this Report.

Charter Section 64 has been a part of the Charter since 1931 and states:

> The Council shall annually make appropriations for the support of all institutions of an educational, scientific, historical and cultural character, and which have a tendency to promote the welfare of the City and its inhabitants, which are now or which may hereafter be controlled by The City of San Diego and partially or wholly operated and maintained by said City for the benefit of its inhabitants.

San Diego Charter § 64. Charter section 64 is vague as to the organizations that can be supported. This Office previously called for clarifying its intent in the Charter. *See* 1939 Op. City Att'y 271 at 273-274 (Aug. 9, 1939) (section "might well be clarified and made more definite and specific.").

The City originally relied on this section in order to support institutions in Balboa Park. 1940 Op. City Att'y 231 (July 5, 1940). This Office analyzed Charter section 64 several times, opining that appropriations made to Balboa Park institutions for maintenance must remain under the control of the City and that the institutions could not legally obligate the City to pay for services for which the institution had independently contracted. See 1936 Op. City Att'y 201 (May 19, 1936), 1940 Op. City Att'y 231 (July 5, 1940).

Currently, the City funds organizations that would be funded pursuant to Charter section 64 through Transient Occupancy Tax (TOT) revenues. SDMC §§ 35.0101 to 35.0138; Council Policy 100-03. TOT revenues support the operations and capital improvements of organizations that are "partially or wholly operated and maintained" by the City as well as other non-profit groups promoting tourism and culture in the City.

The legal effect of repealing Charter section 64 is that the City would no longer be required to make appropriations for "partially or wholly operated and maintained" educational, scientific, historical and cultural organizations." The City may still make appropriations for such organizations without a mandate in the Charter so long as the appropriations serve a public purpose. *Albright v. City of South San Francisco*, 44 Cal. App. 3d 866, 869 (1975). What constitutes a public purpose is a decision for the legislative body; courts presume the validity of a legislative body's determination of public purpose and only overturn it if "illegality clearly and unmistakably appears." *Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 190 (2002).

Repeal of Charter section 71A: Reappropriations at Beginning of Fiscal Year for Salaries and Maintenance and Support Expenses

At its April 16, 2015 meeting, the Committee voted to repeal Charter section 71A and include the operative language of the section in a revised Charter section 71. The Committee approved a revised Charter section 69 at its July 2, 2015 meeting, which included the operative language of Charter section 71A. The Committee did not intend to repeal the substance Charter section 71A; rather just to include it in another revised section.

Voters added Charter section 71A to the Charter in 1943. Charter section 71A allows the Chief Financial Officer (CFO) to approve payments for salaries, maintenance, and support expenses in the event the Council fails to pass the annual appropriation ordinance prior to the

beginning of a fiscal year.[3] San Diego Charter § 71A. Charter section 39 requires the CFO to certify that the Council has made an appropriation prior to approving payments for obligations. San Diego Charter § 39. Absent the language of Charter section 71A, the CFO would have no authority to approve payments prior to the passage of the appropriations ordinance.

The repeal of Charter section 71A must be included in a ballot measure that approves the revised Charter section 69. The language of Charter section 71A is required to continue City operations in the event the Council fails to pass an appropriation ordinance. If voters were to vote on those proposals separately, Charter section 71A could be repealed without its operative terms being included in another section of the Charter. This repeal was not included with other Article VII revisions on the Council's agenda, but must be included in any ballot measure addressing budget revisions.

Repeal of Charter section 76: Limit of Tax Levy

The Committee initially voted to repeal Charter section 76 at its February 5, 2015 meeting. This Office noted in its February 5, 2014 report to Council that Charter section 76 is superseded by Proposition 13, passed by California voters in 1978. City Att'y Report 2014-3 (Feb. 5, 2014). The Committee ultimately voted to repeal Charter section 76 at its October 8, 2015 meeting as part of a group of proposals amending various Charter sections concerning taxation.

Charter section 76 was included in the 1931 Charter and limited the tax levy passed by the Council to $1.34 on each $100.00 of assessed real and personal property in the City. San Diego Charter § 76. It also allowed the Council to levy an additional tax in a sum sufficient to fund pension liabilities, prohibited special taxes other than those authorized by the Charter[4], and provided authority to levy taxes in case of emergency. *Id.*

Proposition 13 added article XIIIA to the California State Constitution in 1978, limiting taxes assessed on the value of property, known as ad valorem taxes, to 1% of the cash valuation of property. Cal. Const. art. XIIIA, § 1. This constitutional provision supersedes contrary city charter provisions. *City of Rancho Cucamonga v. Mackzum,* 228 Cal. App. 3d 929, 945 (1991). Article XIIIA of the Constitution provides some exceptions for taxes used to pay indebtedness incurred by voters prior to 1978, including taxes to pay for pension costs, but those taxes can only be imposed if they were imposed the 1982-83 or 1983-84 fiscal years. Cal. Rev. & Tax. Code § 96.31. This City did not impose the pension tax in either of those years. Furthermore, Charter section 76.1 negates the Charter section 76 prohibition on special taxes and reserves the City's right to impose special taxes as authorized by the California Constitution.

Because the City can only levy ad valorem taxes pursuant to the California State Constitution, Charter section 76 can be repealed without affecting the City's taxing authority. This repeal was also included on the Council's agenda with other Article VII revisions and should be included in a ballot measure with other taxation revisions.

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[3] Charter section 39 transfers the duties of the Auditor and Comptroller to the CFO.

[4] Charter section 76.1 allows special taxes as authorized by article IIIA of the California Constitution, notwithstanding the restriction of Charter section 76.

Repeal of Charter section 77B: Public Transportation

The Committee voted to repeal Charter section 77B at its February 5, 2015 meeting. As noted by this Office in its February 5, 2014 report, the City can no longer levy the tax authorized by the section. City Att'y Report 2014-3 (Feb. 5, 2014). The section now serves no further purpose.

Voters added Charter section 77B in 1966 to allow the City to raise funds with a special tax to purchase a failing privately owned transit system. Ballot Pamp., Special Municipal Elec. (June 7, 1966) argument for Prop. D at 2. The City owned and operated the San Diego Transit System as a non-profit corporation until it transferred ownership to the Metropolitan Transit Development Board in 1985. The City has not levied the tax since 1979 and has not operated a transit system since 1985.

The City can no longer levy the tax in Charter section 77B because it did not levy the tax in either the 1982-83 or 1983-94 fiscal year. The California Revenue and Taxation code states that "a jurisdiction shall not impose a property tax rate . . . in excess of the rate it imposed in the 1982-83 or 1983-84 fiscal year." Cal. Rev. & Tax. Code § 96.31. Since the rate of the Charter section 77B tax was zero in those years, in cannot be levied in any amount.[5]

Since the City cannot levy the tax provided for in Charter section 77B, the section can be repealed without limiting the City's taxing authority. This repeal was not included with other Article VII revisions on the Council's agenda reviewing Charter review items, but should be included in a ballot measure with other taxation revisions.

Repeal of Charter section 81: Allotments

The Committee approved the repeal of Charter section 81 at its May 14, 2015 meeting as proposed by the CFO in a Memorandum to Scott Chadwick, Chief Operating Officer of the City dated April 5, 2015. The CFO recommended the repeal, stating that the section is obsolete and the term "internal budgetary allotment" as used in the section has no clear meaning or relevancy with the City's current budgeting process.

Charter section 81, as included in the 1931 Charter, provided detailed provisions for the City Manager's duty to require department heads to provide a work plan for expending annual appropriations including "allotments of all appropriations by quarter." In 1969, voters deleted those provisions, merely requiring the City Manager to establish "internal budgetary allotments" based on the appropriations ordinance. Ballot Pamp., Gen. Elec. (Nov. 4, 1969), argument for Proposition L at 32. The amendment was intended to provide "improved fiscal management procedures." *Id.*

Without the language deleted from Charter section 81 in 1969, the remaining language provides a mandate to establish "allotments" with no reference to what is intended to be included in the allotments. Previously, it was clear that the annual appropriations were intended to be

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[5] This Office published 2010 City Att'y MOL 196 (2010-4; Feb. 25, 2010) opining that the tax authorized by Charter section 77B constituted indebtedness allowable by Proposition 13 and the tax could be levied. However, that memorandum did not consider the impact of California Revenue and Taxation Code section 96.31.

allotted by quarter. There is no indication that department budgets provided for in the appropriation ordinance are currently allotted by quarter, or any other time period, as required by this section. Whether the department budgets should be allotted by time is a policy decision rather than a legal requirement. This repeal was not included with other Article VII revisions on the Council's agenda reviewing Charter review items, but should be included in the ballot measure with those revisions.

Repeal of Charter section 112: Appraisal of City Assets

The Committee approved the repeal of Charter section 112 at its April 16, 2015 meeting. The CFO suggested repealing the section or, at a minimum, amending the section to make it consistent with modern accounting practice. Memorandum from Mary Lewis, Chief Financial Officer, City of San Diego, to Scott Chadwick, Chief Operating Officer, City of San Diego (April 2, 2015) (on file with the Office of the City Clerk). The Committee voted to repeal the section because the CFO explained that the Center for Financial Research and Analysis (CFRA) standards and Generally Accepted Accounting Principles (GAAP) that the City follows already require the appraisals of assets called for in this section. This information is published in the City's audited Comprehensive Annual Financial Report (CAFR), required by Charter section 111. Since the City includes the information required by Charter section 112 in reports required by Charter section 111, Charter section 112 is unnecessary.

Repeal of Charter section 114: Bureau of Information and Publicity

If Charter section 114 is repealed, the Council will no longer have the option to publish notices online in a City Bulletin in lieu of publishing in an Official City Newspaper.

The Committee voted to repeal Charter section 114 at its February 5, 2015 meeting. This Office noted in its February 5, 2014 legal review that the section allows the City to establish a "Bureau of Information and Publicity" but the duties it prescribes overlap with public information officers and the City Clerk. City Att'y Report 2014-3 (Feb. 5, 2014).

In addition to allowing the establishment of the "Bureau of Information and Publicity," Charter section 114 requires the City Manager to designate an official to publish a City Bulletin. San Diego Charter § 114. The City Bulletin contains "the transactions and proceedings of the Council, the legal advertising for the City and such other information relating to the affairs of the City as shall be determined by ordinance or as the Manager may designate."

Both the Charter and the Municipal Code require certain notices to be published in the Official City Newspaper. Charter section 114 allows the City Bulletin to serve as an alternative to the Official City Newspaper, providing:

> . . . The City Bulletin shall be published in lieu of the awarding of a contract for publication of official advertising in a newspaper of the City when the Council shall determine that it is to the best advantage of the City. The City Bulletin shall be published, distributed or sold in such manner and on such terms as the Council may determine. . . .

San Diego Charter § 114.

Charter section 114 provides authority to do away with any requirement to publish in the Official City Newspaper and allows publication via the City Bulletin, published on the Council's terms allowing the Council to specify that the City Bulletin is to be published online. The City Clerk currently publishes a City Bulletin of Public Notices on the Clerk's website. Doing away with the Official City Newspaper and establishing a website as the City Bulletin was discussed at the Rules Committee in 2003, but there is no record of action and no indication that any proposal went to Council. *See* City Mgr. Report No. 03-057 (Mar. 28, 2003). Repealing Charter Section 114 would limit the City's options for publishing public notices.

Repeal of Charter section 215: Publicity of Records and Charter section 216: Copies of Records

The Committee approved the repeal of both Charter sections 215 and 216 at its August 8, 2015 meeting. This Office noted in its February 5, 2014 legal review that in the years since the sections were included in the original Charter in 1931, the California Public Records Act was enacted, providing citizens with the right to inspect and copy documents unless an exception applies, making the sections unnecessary. City Att'y Report 2014-3 (February 5, 2014).

Charter section 215 "Publicity of Records" and section 216 "Copies of Records," were both adopted in 1931. Charter section 215 provides that City records will be open to public inspection unless the disclosure of the records "would tend to defeat the lawful purpose which they are intended to accomplish." Charter section 216 allows the City to charge for copies of the records.

In 1968, the California Public Records Act was enacted and provides that "public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." Cal. Gov't Code § 6253(a). It also requires that local agencies "make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." Cal. Gov't. Code § 6253(b).

The Public Records Act provides a general overall scheme for providing the public with access to government records. Cal. Gov't Code §§ 6250 – 6276.48. The provisions apply to Charter cities like the City of San Diego. Cal. Gov't Code § 6252(a). Legal issues can arise to the extent that Charter sections 215 and 216 duplicate or conflict with these requirements. Repealing these sections prevents such issues from arising without limiting the public's right to information as provided by the Public Records Act.

Repeal of Article X: Transfer of Police and Fire Department employees into the Retirement System

The Committee voted to repeal Article X at its August 8, 2015 meeting. This Office noted that Article X was no longer necessary because its sole purpose was to transfer members of the City's Police and Fire Departments from an independent retirement system into the San Diego City Employees' Retirement System. City Att'y Report 2014-3 (Feb. 5, 2014).

Article X was added to the Charter in 1946 to allow the transfer of members, which was subsequently completed by the City. Since this transfer was completed, there is no need for the section in the Charter. In a letter to the Committee, SDCERS staff confirmed that the deletion of Article X would have no impact on beneficiaries.

II. PROPOSALS FOR A GENDER-NEUTRAL CHARTER

Charter amendments are governed by the California Constitution and state law, preempting any conflicting provisions in the Charter or the San Diego Municipal Code. Cal. Const. art. XI, § 3; *Howard Jarvis Taxpayers Assn. v. City of San Diego*, 120 Cal. App. 4th 374, 389 (2004). This Office has consistently advised that the full text of charter amendment measures, including strike-outs, must be printed in the ballot materials provided to voters. If ballot materials were challenged, a court would determine whether the published materials were false, misleading, or inconsistent with legal requirements. *See* 2008 City Att'y Report 267 (2008-7; Feb. 22, 2008), analyzing the legal standard for invalidating ballot materials. In determining whether content is "false, misleading, or inconsistent," courts will assume that voters were not misled if "the whole text of which was supplied each of them prior to the election" and "which they must be assumed to have duly considered." *Brosnahan v. Brown*, 32 Cal. 3d 236, 252 (1982).

Omission of the full text invites a potential legal challenge if voters claim they did not fully understand the amendments they were considering. There is no presumption that voters understand a measure when full text is omitted, especially when the measure involves specific changes to current text. *See Woo v. Superior Court*, 83 Cal. App. 4th 967, 977-78 (2000) (questioning voter intent when new charter language was provided in a separate document with no comparison strikeout provided in the ballot materials). Further, providing voters with unambiguous text of a measure can rebut later challenges to a measure based on other misleading ballot materials. *Delaney v. Superior Court*, 50 Cal. 3d 785, 803 (1990).

The Council specifically requested that this Office determine how many pages of the Charter would need to be amended in order for the whole Charter to be gender-neutral. Sections including gender-specific language account for approximately 36 pages of Charter text. The pages counted are Word-document pages of 12 pt. font, single-spaced Charter language. Strike-outs in the final ballot pamphlet will not be in this format, so this page count only demonstrates the volume of text that will need to be amended and does not correspond with the number of pages a ballot measure actually may take up in the final ballot pamphlet.[6]

[6] Further, the question regarding page count does not fully account for potential issues regarding the interaction of a gender-neutral proposal with other measures on the same ballot that concern the same Charter sections. This Office is currently reviewing such issues and will be providing additional analysis to the Council prior to final action to approve ordinances placing such measures on the ballot.

CONCLUSION

The proposals detailed in this report would repeal sections of the Charter for a number of reasons and must be included in specific ballot measures based on the reasons for repealing the section. The repeals described above could be grouped into ballot measures as follows[7]:

- Repeal of Charter-mandated appropriations:
    - Charter section 64
- Repeal of budget provisions of the Charter should be included in a ballot measure with other budget proposals:
    - Charter section 71A
- Repeal of financial management provisions of the Charter should be included in a ballot measure with other financial management proposals:
    - Charter section 81
- Repeal of taxing provisions superseded by Proposition 13 should be included in a ballot measure with other taxation proposals:
    - Charter section 76
    - Charter section 77B

[7] See City Att'y MOL No. 2015-4 (Mar. 4, 2015) for analysis of the single-subject rule for ballot measures as it applies to Charter amendments. Charter amendment ballot measures can group disparate items if they represent technical changes to reasonably related provisions. *Hernandez v. County of Los Angeles*, 167 Cal. App. 4th 12, 22-23 (2008).

- Repeal of unnecessary Charter sections, assuming they can be described in a way that gives them commonality to be included in one measure:
    - Charter section 112
    - Charter section 114[8]
    - Charter sections 215 and 216
    - Article X

JAN. I GOLDSMITH, CITY ATTORNEY

By /s/ Jennifer L. Berry
Jennifer L. Berry
Deputy City Attorney

JLB:sc
RC-2016-3
Doc. No. 1220924

[8] But see the analysis above explaining that the section provides authority for alternate publication of notices and its repeal should be reconsidered by the Council.