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

Section 117: Unclassified and Classified Services

Employment in the City shall be divided into the Unclassified and Classified Service. (a) The Unclassified Service shall include:

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7. Chief Financial Officer

Section 265: The Mayor

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

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

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

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Recommended Language for Official Ballot

Section 39: City Auditor and ComptrollerChief Financial Officer.

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

Section 45: City Treasurer

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

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

Section 117: Unclassified and Classified Services

Employment in the City shall be divided into the Unclassified and Classified Service. (a) The Unclassified Service shall include: ###

7. BudgetChief Financial Officer

Section 265: The Mayor

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

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

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

Recommendation #6: Audit Committee

Summary of Recommendation

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

Recommended Charter Language

Section 39.1: Audit Committee

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

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

Recommended Language for Official Ballot

Section 39.1: Audit Committee

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

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

Recommendation #7: City Auditor

Summary of Recommendation

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

Recommended Charter Language

Section 39.2: Office of City Auditor

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

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

Section 111: Audit of Accounts of Officers

Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent

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

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Recommended Language for Official Ballot

Section 39.2: Office of City Auditor

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

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

Section 111: Audit of Accounts of Officers

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

Summary of Recommendation

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

Recommended Charter Language

Section 69: Fiscal Year and Manager's Estimate

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

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

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

Recommended Language for Official Ballot

Section 69: Fiscal Year and Manager's Estimate

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

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

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

Recommendation #9: Managed Competition

Summary of Recommendation

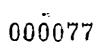
Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

Recommended Charter Language

Section 117: Unclassified and Classified Services

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

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



Recommended Language for Official Ballot

Section 117: Unclassified and Classified Services

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

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

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Summary of Recommendation

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

Recommended Charter Language

Section 40: City Attorney

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

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

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

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

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

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

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

(h) Control of Litigation.

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

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

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

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

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

(i) Settlement of Litigation.

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

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

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

(k) Employment of Other Legal Counsel.

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

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

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

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

Recommended Language for Official Ballot

Section 40: City Attorney

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

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

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

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

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

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

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

(h) Control of Litigation.

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

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

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

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

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

(i) Settlement of Litigation.

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

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

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

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(k) Employment of Other Legal Counsel.

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

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

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

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

Recommendation #11: Salary Setting

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Summary of Recommendation

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

Recommended Charter Language

Section 12.1: Salaries of Elected Officials

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

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

Section 40: City Attorney

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

Section 41.1: Salary Setting Commission

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification of salaries for all elected City officials as provided in section 12.1 of this Charter. The City Manager shall provide from existing resources the staff and services necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to: (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.

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

(3) The benefits package accompanying the City office.

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

(5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

Recommended Language for Official Ballot

Section 12.1: Councilmanic-Salaries of Elected Officials

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

Section 24:1: Mayor's Salary

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

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

Section 40: City Attorney

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The salary of the City Attorney shall be fixed <u>as provided in section 12.1by the</u> Council and set forth in the annual appropriation ordinance, <u>providedexcept</u> that the salary of the City Attorney may not be decreased during a term of office, <u>butand</u> in no event shall said salary be less than \$15,000.00 per year. ###

Section 41.1: Salary Setting Commission

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

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

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

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

(3) The benefits package accompanying the City office.

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

Recommendation #12: Appointments to Outside Organizations

Summary of Recommendation

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

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Recommended Charter Language

Section 265: The Mayor

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

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(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such cases the Mayor shall have the right to submit nominees for consideration.

Recommended Language for Official Ballot

Section 265: The Mayor

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

(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such a cases the Mayor shall have the right to submit nominees for consideration.

Recommendation #13: Mayor as Redevelopment Agency Executive Director

Summary of Recommendation

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

Recommended Charter Language

Section 265: The Mayor

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

(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.

Recommended Language for Official Ballot

Section 265: The Mayor

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

(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.

Recommendation #14: Personnel Director

Summary of Recommendation

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

Recommended Charter Language

Section 265: The Mayor

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

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(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.
(17) Sole authority to dismiss the Personnel Director without recourse.

Recommended Language for Official Ballot

Section 265: The Mayor

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

###

(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

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

Recommendation #15: Composition of SDCERS Board of Administration

Summary of Recommendation

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

Recommended Charter Language

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

Recommended Language for Official Ballot

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

LANGUAGE PROPOSED FOR ADDITION TO THE MUNICIPAL CODE

Recommendation #16: Audit Committee

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

- (a) Review, discuss and monitor the City's annual audited financial statements and any periodic financial statements with the City Manager, the City Auditor and the outside auditors.
- (b) Based on its review and discussions with management and the outside auditors, recommend to the City Council whether the City's audited financial statements should be received by the City Council.
- (c) Monitor changes to the City's auditing and accounting principles and practices as suggested by the outside auditors or management.
- (d) Monitor the effectiveness of the City's internal controls disclosure controls and procedures in consultation with the City Manager, City Auditor and outside auditors.
- (e) Review, discuss and monitor with the City Manager and the outside auditors:
 - (1) Any material financial or non-financial arrangements that do not appear on the City's financial statements;
 - (2) Any transactions or courses of dealing with parties related to the City that are significant in size or involve terms or other aspects that differ from those that would likely be negotiated with independent parties, and that are relevant to an understanding of the City's financial statements;
 - (3) Material financial risks that are designated as such by management or the outside auditors.
- (f) Establish procedures for the receipt, retention and treatment of complaints received by the Audit Committee regarding misuse of City assets; and the confidential, anonymous submission by City's employees or members of the public of concerns regarding such misuse.
- (g) Discuss and with the outside auditors annually or more often if necessary, a report by the outside auditors describing (i) the outside auditors' internal quality-control procedures, and (ii) any material issues raised by the most recent internal quality control review or peer review of the outside auditors, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more audits carried out by the outside auditors, and the steps taken to address those issues.
- (h) Review the report by the outside auditors concerning: (i) all critical accounting policies and practices to be used; (ii) any deviation from GAAP in the City's financial statements; and (iii) any other material written communications between the outside auditors and the City's management.
- (i) Review, discuss and monitor with the outside auditors annually or more often if deemed necessary by the Audit Committee, all relationships the outside auditors have with the City in order to evaluate the outside auditors' continued independence, and receive from the outside auditors on an annual basis a written statement regarding the auditors' independence.

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

Recommendation #17: City Auditor

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

- (a) The Audit Plan required in Charter Section 39.2 shall be based on a formal Risk Assessment of City operations. The Risk Assessment shall be performed in accordance with the Professional Practice of Internal Auditing. Those City activities, organizational units, or functional processes that have the highest level of inherent risk, as identified in the Risk Assessment, shall be included in the annual Audit Plan.
- (b) On or before September 1 of every year, the City Auditor shall conduct an annual audit of the City's internal financial controls, and post audits of the fiscal transactions and accounts kept by or for the City and its departments, offices and agencies. Such audits shall include but not be limited to the evaluation of key controls over financial reporting, examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with Generally Accepted Government Auditing Standards in conjunction with the City Standards for the Professional Practice of City Auditing, and shall include tests of the accounting records and other auditing procedures as the City Auditor may deem necessary under the circumstances. The audits shall include the issuance of suitable reports of examination in order to assure that the Audit Committee, Council, City Manager, and the public will be informed as to the adequacy of the City's internal controls over financial reporting.
- (c) Conduct performance audits, as appropriate, of any City department, office or agency. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:
 - (1) Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.
 - (2) Causes of inefficiencies or uneconomical practices, including inadequacies in information management systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
 - (3) Whether the purposes and/or functions of the department or agency are being satisfactorily achieved.
 - (4) Whether objectives established by the City Manager, Council or other authorizing body are being met.
 - (5) Whether audit recommendations will improve efficiency and effectiveness.
- (d) Conduct special audits and investigations. "Special audits" and "investigations" mean assignments of limited scope, intended to determine:
 - (1) The accuracy of information provided to the City Manager, Council, Audit Committee or public.
 - (2) The costs and consequences of recommendations made to the Council.
 - (3) The validity of accusations of material fraud, waste or abuse reported through the City's confidential hotline and other sources.
 - (4) Other information concerning the performance of City Departments, Offices or Agencies as requested by the City Manager or Audit Committee.

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- (e) Prepare and submit to the Audit Committee, at least quarterly, a written report of the City Auditor's activities and findings, together with any recommendations to improve the administration of the City;
- (f) Perform other auditing functions, consistent with other provisions of the Charter, and prepare and submit such other reports, as may be requested by the City Manager, City Council or Audit Committee such as but not limited to:
 - (1) Assessing the compliance of City departments, agencies and vendors with appropriate City, State and Federal policies, procedures, laws, regulations, and contracts.
 - (2) Evaluating whether City assets are properly accounted for and safeguarded from losses.
 - (3) Reviewing the City's information technology systems to ensure electronic data is accurately processed and adequately safeguarded.

SAN DIEGO CHARTER REVIEW COMMITTEE 2007



EXECUTIVE SUMMARY OF THE FINAL REPORT

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

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

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

The Subcommittee on Interim Strong Mayor would take on the issues of improving the functionality of the Strong Mayor form of governance, and identifying legislative tightening required to implement it on a long-term basis. The Subcommittee on Financial Reform would address the recommendations made by the Kroll Report, and other needed financial reforms. The Subcommittee on Duties of Elected Officials would handle the clarification of

- the roles and responsibilities and separation of powers under the Strong Mayor form of governance. The Chair of the Committee requested each of the Committee members to identify which Subcommittee best fit their interests in the reform process. The division of labor necessary to allow the Committee to accomplish its mission proved easy to achieve, and each Committee member was assigned to the Subcommittee of his or her choice. The Subcommittees each voted to approve a workplan assembled by staff, and the full Committee approved all of them.
- For nearly six months (from April 13 to October 4), the San Diego Charter Review Committee and its Subcommittees held 51 meetings, including public forums in every Council District, and meetings by both Subcommittees and full Committee in Balboa Park and City Hall. The public forums and full Committee meetings were all televised on City Channel, and then placed on the website for webcast. The research that the Committee and its Subcommittees have done has been handed out at all meetings, and placed on the website for wider distribution. During 25 weeks of meetings and forums, the Subcommittees and full Committee heard testimony from labor representatives, members of the business community, employees, administrators and elected officials of the City government, experts on urban governance, members of good government groups, and as many members of the wider public who were so civic-spirited as to participate. In terms of the experience of previous San Diego charter commissions, as well as charter commissions from other cities, the process was very open and inclusive. The full Committee and its Subcommittees voluntarily operated under the requirements of the Brown Act for posting its meetings, taking input from the public and holding all of its meetings and conducting its research and deliberations in full public view with citizen participation. The San Diego Charter Review Committee is grateful for all of the assistance that it received from the public-spirited citizens and residents of this City.

I. PROPOSED CHARTER CHANGES FOR THE 2008 BALLOT

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

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

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

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

II. PROPOSED CHARTER CHANGES FOR A LATER BALLOT

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

III, IV and V: OTHER MATTERS

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

VI. ASSEMBLY OF THE FINAL REPORT

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

First Motion

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

I. CHANGES PROPOSED FOR THE 2008 BALLOT

INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

- 1. Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.
- Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

(AND)

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

- 3. Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.
- 4. Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

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

Second Motion

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

I. CHANGES PROPOSED FOR THE 2008 BALLOT

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

FINANCIAL REFORM AND THE KROLL REPORT

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

(AND)

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

- 6. Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.
- 7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote. Amends Section 111 (Audit of Accounts of Officers) to transfer auditing responsibilities of City Auditor and Comptroller to City Auditor and Audit Committee.
 - . Amends Section 69 (Fiscal Year and Manager's Estimate) to require that the Manager propose and the Council adopt a balanced budget annually. The term "balanced budget" will mean sufficient funds are available to cover projected expenditures. The Manager shall monitor and report on the budget throughout the fiscal year and if he or she determines there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the Manager shall propose revisions to keep the budget balanced. Within 60 days of the Manager's submission of these revisions, the Council shall adopt them or offer alternative ones to ensure a balanced budget. The Manager and Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

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

<u>Third Motion</u>

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

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III. ITEMS UPON WHICH NO CHANGES ARE RECOMMENDED

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

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

Fourth Motion

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

I. CHANGES PROPOSED FOR THE 2008 BALLOT

DUTIES OF ELECTED OFFICIALS

- 9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.
- 10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

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

Fifth Motion

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

I. CHANGES PROPOSED FOR THE 2008 BALLOT

DUTIES OF ELECTED OFFICIALS

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's

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recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

II. CHANGES PROPOSED FOR A LATER BALLOT

- 12. Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.
- 13. Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency.
- 14. Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

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

Sixth Motion

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

IV. SUMMARY OF MUNICIPAL CODE PROPOSALS

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

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

Seventh Motion

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

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

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

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

Eighth Motion

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

Ninth Motion

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

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



RULES OCT 2 4 2007 #1 RULES NOV 0 7 2007 #1

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

Date Issued: October 18, 2007

IBA Report Number: 07-102

Rules Committee Agenda Date: October 24, 2007

Item Number: 1

000103

Subject: Charter Review Committee Recommendations

OVERVIEW

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

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

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

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



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

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FISCAL/POLICY DISCUSSION

Sunset Revision

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

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

Eleven-Member City Council

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

The IBA has recently attempted to quantify the actual cost of a redistricting effort. Based on the 2002 Annual Budget, the City budgeted almost \$162,000 for the 2000 Redistricting Commission (RC), which comprised two part-time staff at approximately \$72,000 and non-personnel expense. In addition, the IBA is aware that the RC utilized the services of a Senior Planner and that the City Clerk provided Recorders to take minutes. These costs are not captured in the allocation above and there may be further staff or material support that the IBA has been unable to identify. The IBA believes this information can be valuable in considering the timeframe for redistricting to expand the Council, should this recommendation be forwarded. However, we would note that these are budgeted, not actual costs. The IBA was unable to find records for the actual costs associated with the 2000 RC. In addition, the 2000 RC made a recommendation for future RC's budget requirements in their final report in 2001. The 2000 RC suggested the budget should include funding for three full-time staff, consultants, legal counsel, and various supplies and equipment. This closely mirrors a proposal made by the 2000 RC in December 2000 (Attachment I). The 12 month budget proposed \$750,000 for five staff, consultants and related costs. The IBA estimates that a proposal for just three staff could be reduced significantly. However, considering the increase in cost for salaries and materials since 2000, we suggest that the cost of supporting an RC effort, as envisioned by the 2000 RC, could still be between \$650,000 - \$700,000.

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

Veto Override

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

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

Independent Budget Analyst

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

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

Chief Financial Officer (CFO)

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

Audit Committee and City Auditor

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

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

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

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

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Balanced Budget

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

City Manager/Chief Operating Officer

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

CONCLUSION

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

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

Penni Takade Deputy Director

Attachment

APPROVED: Andrea Tevlin Independent Budget Analyst

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Review of Charles Communi-

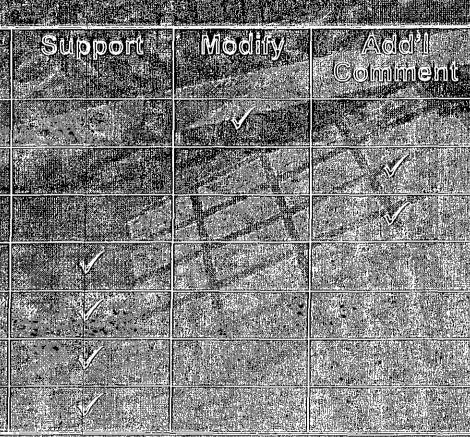
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IBA Recommendations

- lopic Sunset Revision
- Eleven-Member City Council
- Vero Override
- Independent Budget Analyst Chief Flhancial Officer
- Audit Committee & City Auditor Balanced Budget



IBA suggestion for City Manager/COO language.



Sunset Revision

- Characterized as extended trial
- No full her action required to make permanent
- IBA suggestions:
 - Clarity that this measure would make permanent the Strong Mayor form of government, or
 - Retain trial period by providing for automatic placement on ballot prior to expiration in 2014

Eleven-Member City Council Cost of Redistricting

2000 Redistricting Commission (RC):

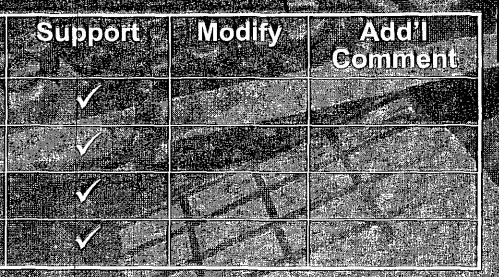
- \$162,000 budgeted in 2002 Annual Budget
 - Two part-time staff and non-personnel expense
 - Additional expense for services of a Senior Planner and Recorders
- RC recommendation:
 - \$750,000 proposed at inception
 - At conclusion, recommended 3.00 full-time statif,
 - . consultants, legal counsel, supplies and equipment
- Potential implications:
 - \$650,000-700.000 for new RC, as envisioned by 2000 RC
 Approximately \$3 million in additional amnual operating costs for the new districts lit current district budgets are retained



2/3 Veto Override

- If implemented for an eight-member City Council, would require 3/4 (75%) vote:
- For ordinances requiring six votes, seven of eight (85.7%) would be required to override a veto
- Of other cities surveyed by Chariter
 Committee staff, 2/3 was most common
- If implemented for 11-member Council, eight votes (72.7%) required to override

Independent Budget Ahalyst Ohier Financial Officer Audit Committee & City Additor Balahced Budget



 IBA worked with Financial Reform Subcommittee on each IBA finds these proposals reasonable and consistent with professional auditing standards



Independent Budget Analyst

- Clarifies that work of IBA may include both budgetary and policy analysis, as currently provided in Municipal Code
- Retains the Council's authority to set specific powers and duties within the Municipal Code.

Chief Einancial Officer

 Replaces Auditor & Comptroller throughout Charter with regard to comptroller duties
 CFO to be confirmed by City Council
 City Treasurer (subordinate of CFO) no longer confirmed

Audit Committee & City Auditor

- The two proposals together satisfy the head to establish the most independent and effective infrastructure
- Adheres to professional auditing standards as confirmed by ALCA testimony at subcommittee
- Closely mirrors IBA proposal from Augusti 2006

Balanced Budget

 Recognizes role of executive and legislative branches in the budget process
 Ensures a balanced budget is adopted and maintained throughout the fiscal year

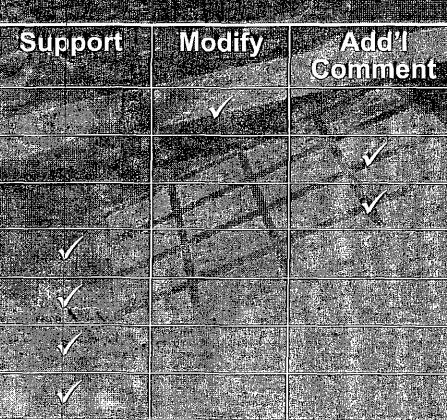
City Manager/ Chief Operating Officer

- Article XV of Charter confers duties of City Manager on Mayor
- Section 265(b)(7) (9) allows Mayor to appoint, direct, dismiss the City Manager
- Replace words City Manager In those sections with "Chief Operating Officer" or other term to decrease potential for confusion yet provide for Mayoral appointment of top manager.

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Conclusion

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



· IBA suggestion for City Manager/COO language

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

1200 THIRD AVENUE, SUITE 1620 SAN DIEGO, CALIFORNIA 92101-4178 TELEPHONE (619) 236-6220 FAX (619) 236-7215

November 2, 2007

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

CITY BALLOT MEASURES SUBMITTED TO VOTERS ARE SUBJECT TO THE SEPARATE VOTE (SINGLE SUBJECT) RULE

INTRODUCTION

The San Diego City Council Rules, Open Government, and Intergovernmental Relations Committee is scheduled to consider the final report of the 2007 San Diego Charter Review Committee, issued on October 4, 2007 [CRC Report]. The report proposes that the City Council submit a series of amendments to the voters during 2008. CRC Report at 8-9. The report broadly separates the changes into three major groups: interim strong mayor and legislative tightening; financial reform and the Kroll report; and duties of elected officials. This Office anticipates the Committee and the Council may request advice on whether these measures may be combined in a single ballot measure. This Report discusses the requirement that each measure submitted to voters address only a single subject so that each subject may be voted on separately.

DISCUSSION

I. The Separate Vote and Single Subject Rules.

The separate vote rule is expressed in the last sentence of Article XVIII, section 1 of the California constitution, which provides: "Each amendment [to the state constitution] shall be so prepared and submitted that it can be voted on separately." Although this provision has existed in one form or another in the state constitution since 1879,¹ it was only in 2006 that the California Supreme Court interpreted its scope and construction. In *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735 (2006) [*McPherson*], the court decided the separate vote rule limited the authority of the state legislature to package disparate proposed constitutional amendments in a single measure, and that it should be construed consistently with single subject rule, a kindred provision governing voter-originated constitutional initiatives under Article II, section 8(d) of the constitution. *Id.* at 738.

¹ The 1879 version provided: "Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately." *Id.* at 747.

Both the separate vote rule and the single subject rule serve the same purpose—to bar submission of measures that "might cause voter confusion or might constitute 'logrolling'- that is, the practice of combining two or more unrelated provisions in one measure, thereby forcing a single take-it-or-leave-it vote on matters that properly should be voted upon separately." *Id.* at 749 (citations omitted) and 765-766. The goal in classic logrolling is to bundle a provision attractive to the voters with one that is less attractive, "simply to increase the likelihood that the proponent's desired proposal will be adopted." *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1151 (1999).

II. Charter Measures Submitted by the City Council to the Voters Are Subject to the Separate Vote (Single Subject) Rule.

Courts have not yet determined that the separate vote rule of the California Constitution is a matter of statewide concern, applicable to the submission of charter amendments to city voters by their legislative bodies. In San Diego's case, the wait for such decision is unnecessary because the Charter requires the City Council to comply with the separate vote rule in submitting charter amendments to the voters.

Charter section 223 was adopted with the 1931 City Charter. It provides the Charter "be amended in accordance with the provisions of Section Eight, Article Eleven, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution." The 1931 version of Article XI, section 8 of the California Constitution, incorporated by section 223 of the City Charter, permitted city legislative bodies to submit multiple proposals to amend a City charter that were "... to be voted upon by the electors separately. ..." Former Cal. Const. Art XI § 8 (Cal. Stats. 1931).²

The virtually identical language of these provisions indicates the intent to incorporate the separate vote rule from the California constitution into the City Charter, making it applicable to charter amendments submitted by the City Council to the voters. This interpretation is also consistent with Charter section 275(b) that requires City ordinances: ". . . shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title," ³ and section 27.0503 of the San Diego Municipal Code, requiring the City Council to "decide by ordinance the content of the ballot question for each ballot measure. . . ."

³ Superceded Charter section 16 also provides: "All ordinances . . . shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title."

-2-

 $^{^2}$ The full sentence in former Article XI, section 8 refers both to amendments proposed by the legislative body and the electors. It provides: "In submitting any such charter or amendment separate provisions, whether alternative or conflicting, or one included in the other, may be submitted at the same time *to be voted on by the electors separately*, and, as between those so related, if more than one receive a majority of votes, the proposition receiving the larger number of votes shall control as to all matters in conflict."

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November 2, 2007

Committee on Rules, Finance and Intergovernmental Relations

III. The "Reasonably Germane" Test.

The test of whether a particular measure submitted to the voters meets or violates the separate vote rule is the same test used to determine a violation of the single subject rule. *McPherson*, 38 Cal. 4th at 763. The court construes both in an "accommodating and lenient manner so as not to unduly restrict the Legislature's or the people's right to package provisions in a single bill or initiative." *Id.* at 764.

The court has "found the single subject rules to have been satisfied so long as challenged provisions meet the test of being reasonably germane to a common theme, purpose, or subject." *Ibid.* The court went on to note that, "[i]n setting forth the 'reasonably germane' test, several of our prior decisions have stated or repeated language suggesting the standard requires that each of a measure's parts be reasonably germane to one another as well as reasonably germane to a common theme, purpose, or subject. . . . In applying the reasonably germane test, however, our decisions uniformly have considered only whether each of the parts of a measure is reasonably germane to a common theme, purpose, or subject, and have not separately or additionally required that each part also be reasonably germane to one another." *Id.* at 764 n. 29. (citations omitted, emphasis in original.)

Examples of measures that have and have not met this test include:

- In *McPherson*, the California Supreme Court held a two-part legislatively sponsored measure violated the separate vote rule because each part was not reasonably germane to the other. *McPherson*, 38 Cal. 4th at 779. One part of the measure proposed a constitutional amendment to require that a political party's top vote-getter in a primary election be permitted to run in the following general election. The second part proposed a constitutional amendment to provide a new means for the state to pay bond obligations. *Id.* at 739. The scheme was described as "classic logrolling." *McPherson*, 38 Cal. 4th at 791 (Moreno, J., concurring).
- The California Supreme Court upheld Proposition 8, known as the Victims' Bill of Rights, against a single-subject challenge. The Court held each of its several facets was reasonably germane to the general subject of promoting the rights of actual or potential crime victims. The court also cautioned that initiative proponents did not have a blank check to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or a general object. *Brosnahan v. Brown*, 32 Cal. 3d 236, 246-253 (1982).
- A trailer bill that amended, repealed or added approximately 150 sections to over 20 codes had as its single subject "fiscal affairs" or "statutory adjustments" and was too broad to comply. *Harbor v. Deukmejian*, 43 Cal. 3d 1078, 1100-1101 (1987).

000124 -

Committee on Rules, Finance and Intergovernmental Relations

- November 2, 2007
- A proposed initiative to restrict legislative salaries and transfer reapportionment from the Legislature to the Supreme Court could not be upheld under the general subject of voter involvement or voter approval of political issues. *Senate of the State of Cal.*, 21 Cal. 4th at 1162-1163.

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CONCLUSION

Our Office will provide advice as to whether any proposed measure might meet the separate vote test when the Council decides which proposed charter amendments should go to the voters. This Office recommends the Committee and Council keep in mind the purpose behind the separate vote rule, namely, to prevent voter confusion and to avoid "logrolling," when considering whether certain measures should be considered separately or together by the voters.

Respectfully submitted,

Mushand J. Aginine

MICHAEL J. AGUIRRE City Attorney

JAK:als RC-2007-17

RULES 11/07/07 #1



OFFICE OF MAYOR JERRY SANDERS CITY OF SAN DIEGO

MEMORANDUM

DATE:	November 5, 2007
TO:	Honorable City Council
FROM:	Mayor Jerry Sanders
SUBJECT:	Mayor's Comments on the Final Report of the City of San Diego 2007 Charter Review Committee

On January 22, 2007, I issued a memo creating the ad hoc San Diego Charter Review Committee and requesting City Council nominees to serve on that Committee. For six months (from April 13 to October 4) the Charter Review Committee and its Subcommittees held 51 public meetings, including public input forums in every council district. In addition to my seven appointees and the Council's eight appointees, each Committee meeting was staffed by an independent consultant who advised the City of Los Angeles on its Charter Review process, the Independent Budget Analyst or a member of her staff, deputy city attorneys and members of my own staff. The Committee took testimony from labor representatives, members of the business community, experts on urban governance, members of good government groups, elected officials and members of the general public.

As a result of those hearings, the Committee offered up eleven charter recommendations for your consideration to be placed on the 2008 ballot. Additionally, the Committee considered seventeen additional issues on which they recommended further research by a future charter review body.

I am proud of the service and professionalism demonstrated by the Charter Review Committee and congratulate them on their work product. Below are my comments, and in some cases, alternate recommendations, on each of the eleven Committee recommendations for the 2008 Ballot.

1. The Sunset Provision:

Committee Recommendation: Extend the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor

Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

Mayor's Comments: I favor a simple recommendation that the issue of whether or not Strong Mayor is permanent be automatically placed on the ballot in 2010. The Strong Mayor form of government is new to San Diego as the citizens voted for a 5- year experiment, starting in 2006. I believe the Strong Mayor form of government is an improvement, and it is consistent with the vast majority of large cities that follow an executive/legislative form of local government. I agree with the Committee's reasoning that Strong Mayor deserves support; however, I disagree that the decision should be taken away from the voters. I also believe the Committee's language is too complicated and may be confusing to some voters who have not been party to the hours of discussion and public comment on the top.

2. Mayoral Veto:

Committee Recommendation: Amend Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a twothirds Council majority vote to override a mayoral veto. Additionally they recommended amending Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds Council majority to pass, then the Council would need to vote by a majority of two-thirds-plus-one-member in order to override a mayoral veto.

Mayor's Comments: I strongly support this recommendation. From its founding, our democratic form of government has relied upon a system of checks and balances, with the legislative branch controlling the budget and the executive branch exercising an effective veto mechanism. Here, the Strong Mayor experiment failed to provide that check and balance and instead gave the executive branch but a right to reconsideration by allowing the same number of votes to override a veto as that necessary to pass the legislation in the first instance. The Committee's recommendation deals with this problem in a straightforward manner consistent with the same veto requirement used by almost every strong mayor city, state and the federal government.

3. Additional Council Districts:

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

Mayor's Comments: While I agree that the size of the council should be increased, I favor only increasing the number of council districts by one only to 9 total members, as soon as practicable. Increasing the size of the council by three will be costly and has the potential to dilute minority representation represented most prominently in the council districts south of Interstate 8.

4. Role of the IBA:

Committee Recommendation: Amend Section 270 to clarify that the Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

Mayor's Comments: I agree with this recommendation as it reflects that Office's current practices. Further, I believe that it would be appropriate to change the title to Legislative Analyst to reflect these duties similar to California's Legislative Analyst Office (LAO).

5. Chief Financial Officer:

Committee Recommendation: Amend Charter section 39 to create the role of Chief Financial Officer and to remove the need for Council confirmation of the City Treasurer.

Mayor's Comments: I support this recommendation. It eliminates confusion and creates a more modern model of financial management consistent with the Kroll Report.

6. Audit Committee:

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

Mayor's Comments: I agree with the Committee's recommendation that the City establish an Audit Committee. However, contrary to the Committee's further recommendations, I recommend the Audit Committee, consistent with the Kroll Report, be composed of a total of 3 members, including 1 member of the City Council and 2 highly qualified, outside professionals appointed by the Mayor, one of whom chairs the committee. I make this recommendation because the financial markets will assess the chair's qualifications and experience in assessing our City's financial strength.

7. Internal Auditor:

Committee Recommendation: Add a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the Mayor in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a twothirds vote.

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

8. Balanced Budget Requirement:

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

Mayor's Comments: I support this recommendation. It helps to encourage greater accountability by the Mayor and Council in the budgeting process.

9. Contracting Safety Personnel:

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

Mayor's Comments: I support this recommendation. This fulfills a promise that was made to voters in conjunction with the passage of Proposition C.

10. Role of the City Attorney:

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

Mayor's Recommendation: I cannot support these recommendations at this time. I commend the committee on their thoughtful and concise changes to Charter Section 40; however, I believe these issues need greater exploration and recommend that Section 40 issues be more fully considered by a future charter committee.

11. Salary Setting:

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

Mayor's Comments: I cannot support this recommendation. The proposal may have potential conflicts with our Charter in its delegation of authority by the Mayor and the Council.

12. Composition of SDCERS Board. Committee Recommendation: No Change.

I am disappointed the Committee chose not to implement the Kroll Report changes to the SDCERS Board in its composition and reduced number of Board members. I understand they reviewed substantial materials and analysis and decided to allow the 2004 voter approved changes to continue for the time being. In my opinion, the City should move beyond the 2004 changes and implement the Kroll recommendations to ensure greater independence. As such I will bring forward to the Council a recommendation of Charter language that implements the Kroll recommendations to alter the composition and reduce the size of the SDCERS Board.

While I have offered up my differences on a few of the Committee's recommendations, the City owes a debt of gratitude to the Charter Review Committee for all its hard work. I am happy to forward this final report to the Council for its consideration. I would also ask that the Council place some variation of these recommendations on the June 2008 ballot.

cc:

Jay Goldstone, COO Elizabeth Maland, City Clerk Mike Aguirre, City Attorney Andrea Tevlin, Independent Budget Analyst The San Diego Charter Review Committee Members

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

) Sideline

03 DEC 21 MIG: 24

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

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

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

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

Respectfully Submitted,

George I. Doveland GL/klm

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

City of San Diego Year 2000 Redistricting Commission Proposed Budget

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



SAN DIEGC

THE CITY OF

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

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

December 1, 2000

Office of the CITY CLERK 533-4000 Page 1 of 2

BRINGS US ALL TOGE

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

Redistricting Commission Chief of Staff

BACKGROUND INFORMATION

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

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

THE POSITION

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

(1) Assist the Redistricting Commissioners and provide technical and demographic assistance to analyze and formulate redistricting plans and maps.

(2) Compile databases of election returns and demographic characteristics at the precinct/census tract level or other unit of analysis, as needed.

(3) Compile expert reports, studies and court findings pertaining to redistricting.

(4) Compile cases, statutes, resolutions, reports, learned treatises, etc. reflecting the existence of past and continuing discrimination in related to redistricting.

(5) Produce informational/educational materials relevant to redistricting.

(6) Work with the City Attorney's Office to obtain legal assistance where necessary to insure compliance with the Constitution, Voting Rights Act, Brown Act, and City of San Diego Charter.

(7) Select, train and supervise subordinate staff.

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



SAN DIEGC

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

CHARLES G. ABDELNOUR, J.D. City Clerk, C.M.C. Office of the CITY CLERK 533-4000

Page 2 of 2

OUALIFICATIONS

The ideal candidate will have the following:

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

COMPENSATION

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

SELECTION PROCESS

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

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

The City of San Diego is an Equal Opportunity Employer.



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Association of Local Government Auditors

#GO1 1/14/08

January 8, 2008

Council President Scott Peters

and Members of the San Diego City Council

City Administration Building

202 "C" Street San Diego, California 92101

Dear President Peters and Members of the City Council

We appreciated the opportunity to participate in your Audit Committee meeting on January 7th. During that meeting, a number of questions arose regarding the potential implications of Audit Committee and City Auditor recommendations made by the Independent Budget Analyst. We concur with those recommendations and would like to take this opportunity to provide some additional comments

First, regarding City Auditor selection process, we believe that the most important factor is independence from management. Nationally, there are a wide variety of successful structures that incorporate either independently elected or legislatively appointed auditors. While we certainly believe that the proposed City Auditor recommendations are viable, care should be taken to ensure that the appropriate level of independence from management is maintained regardless of the selection alternative selected.

Second, regarding the makeup of the Audit Committee, we recognize that a committee that includes only elected legislators can be viable with the proper level of technical support. However, we recommend inclusion of non-elected citizen experts for the following reasons;

One, inclusion of committee members from both the legislative body and outside the government provides a greater diversity of perspective.

Two, given the increasing complexity of auditing and financial statement requirements, the expertise provided by outside professionals is an important element of the decision-making process. Three, although some cities include outside experts as non-voting members, allowing the outside experts a voting role on the committee provides for a greater degree of ownership of the decision-making process and as such provides additional incentive to perform their committee member functions at the highest level possible

Thank you for giving us the opportunity to participate in this process. We look forward to presenting during the Council meeting on the 14th. Should you have any questions, please feel free to contact Ann-Marie Hogan at (510) 981-6750 or me directly at (757) 382-8511

> Sincerely, Juip Park

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



Association of Local Government Auditors

Model Legislation Guidelines for Local Government Auditors

Third Edition 2007

MODEL LEGISLATION GUIDELINES FOR LOCAL

Ordinance/Resolution/Policy Statement

Ordinance/Resolution/Policy Statement. Additional Key Elements: Organizational Independence Term Nonpartisanship Restrictions on Other Candidacy Qualifications – Competent Leadership Compensation Funding Appointment of Employees Professional Development. Powers and Duties Scope of Audits Standards Audit Committee Audit Schedule Access to Employees, Records and Property. Agency/Response Audit Reports Report of Irregularities Annual Report Addit Follow-Up Contract Auditors, Consultants and Experts Peer Reviews



Association of Local Government Auditors 449 Lewis Hargett Circle, Suite 290 Lexington, KY 40503 p. (859) 276-0686 f. (859) 278-0507 www.governmentauditors.org

INTRODUCTION

Government auditing is a connerstone of good public sector governance and stewardship. The Association of Local Government Auditors (ALGA) supports the establishment and continuous improvement of independent financial and performance auditing in local government.

Local governments establish, staff, and maintain independent audit functions to enhance accountability, earn and increase citizen confidence and respect for government, and provide an independent and objective perspective.

In 1992, ALGA (then known as the National Association of Local Government Auditors) issued its first edition of "Guidelines and Model Authorizing Legislation for Local Government Audit Functions." A second edition was issued in 1999. With this third edition, the approach has been modified to focus on important elements to consider when establishing an audit function or updating existing Charter or Code language. These changes to the guidelines take into consideration differences in organizational structures (elected or legislatively appointed), enabling laws, recognized government auditing standards and public expectations.

To establish an audit function in one's own local jurisdiction, it is recommended that the following be addressed at a minimum;

Independence

When establishing an audit function, it is very important that the auditors be viewed as impartial and objective in conducting their work. In order to be independent in fact and appearance, auditors must be free from conflicts of interest and free from interference in how the work is conducted and reported. Government Auditing Standards identify three types of impairments to independence:

- Personal impairments are conflicts that arise from relationships, financial interests, other job responsibilities and beliefs.
- External impairments result from interference by the audited entity or oversight body that affects the auditor's ability to conduct work necessary to achieve the objective or report results.
- Organizational impairments are conflicts that arise from reporting relationships within the audited entity and assignment of incompatible duties to the audit function.

Auditors must have systems in place to identify, resolve, or report impairments to independence and must protect their independence by not performing management functions and by not auditing their own work.

Standards

Professional standards provide an overall framework for ensuring that auditors have competence, integrity, objectivity and independence in planning, conducting and reporting their work. Legislation should require adherence to recognized government auditing standards such as the Government Auditing Standards issued by the Comptroller General of the United States. Also, the International Standards for the Professional Practice of Internal Auditing, issued by the Institute of Internal Auditors, is used by internal auditors in the private sector and in some local governments. Both sets of standards incorporate, by reference, the American Institute of Certified Public Accountants' standards for financial statement audits.

Independent Audit Committees

Governments must establish protections to ensure that audit functions are empowered to report significant issues to appropriate oversight authorities. One means of accomplishing this protection is through creation of an independent audit committee. To be independent, the audit committee is selected by the legislative body, and may be a subcommittee of the body or composed of both government and community leaders. Recognized audit authorities have amended their practice guides to recommend that audit committees are independent of management, and that committee members are collectively knowledgeable about financial matters.

Other Key Elements

The following are other key elements to consider:

- Assure that the auditor has unrestricted access to local government employees, officials, records, vendor contracts and reports.
- Negate the influence of partisan politics on the selection and operations of the appointed auditor or on the operations of the elected auditor.
- Require a report, written or in some other retrievable form, containing relevant background information, findings and recommendations regarding audited activities. Communicate the results to the audit committee, legislative body, management and the public.
- Require that responsible government managers promptly respond in writing, within a time specified, to audit recommenda-
- . tions explaining what actions are planned or have been taken to deal with problems identified in audit reports.
- Require follow-up on significant findings and recommendations from previous audits to determine whether timely and appropriate corrective actions have been taken by management.
- Ensure that all contracts contain a right-to-audit provision.
- Assign the auditor responsibility to coordinate and monitor all audits and audit related services received by the local government entity including those performed by public accountants, consultants or audit organizations of the entity and its subdivisions.
- Provide for periodic peer reviews of the audit function.

Existing Legislation

The guidelines provided are meant to be considered in establishing legislation that will make sense for your own particular community. It is important to be aware of existing laws, which may be in conflict with the proposed legislation, and to address any conflicts with the help of attorneys and specialists, before bringing legislation forward for a vote by the governing body or the citizens. In some cases, it may be necessary to amend laws at a higher level of government. For example, many states and provinces have open meeting and public records laws that encourage transparency or disclosure of government operations. Therefore, audit reports are released to the public. Yet, with regard to allegations of fraud, waste and abuse, jurisdictions may have adopted laws limiting disclosure of information until an investigation is complete.

The local governing body will enact legislation in various forms, depending on the particular state or provincial constitution or statutes. The information contained in this document is to be considered as general guidelines to be adapted in the context of those applicable laws.

For Additional Information or Copies

Additional copies may be obtained from

Association of Local Government Auditors

en na se

- Lexington, Kentucky 40503-3590
- _____Phone (859) 276-1147
- www.governmentauditors.org

MODEL LEGISLATION GUIDELINES FOR LOCAL GOVERNMENT AUDITORS

The Charter or Code to establish an audit function is an important document. It sets forth the qualifications, duties, powers and manner of securing the office of the local government Auditor. The local governing body will enact legislation in various forms, depending on the particular state or provincial constitution or statutes. The information contained in this document is to be considered as general guidelines to be adapted in context with applicable state or provincial laws. Many of the elements described on the following pages are applicable to an elected or appointed Auditor.

Ordinance/Resolution/Policy Statement

WHEREAS, public officials, government managers, and private citizens want and need to know not only whether government funds are handled properly and in compliance with laws and regulations, but also whether public programs are achieving the purposes for which they were authorized and funded, and, whether they are doing so efficiently and economically.

WHEREAS, an independent auditing function can provide objective information on the operations of government programs, assist managers in carrying out their responsibilities, and help ensure full accountability to the public.

WHEREAS, recognized government auditing standards provide a framework for improved government decisionmaking, oversight and accountability.

WHEREAS, the independence and public accountability of the Auditor can be assured by provision of an (elected or legislatively appointed) Auditor.

Additional Key Elements

Local government charters, ordinances or policy statements establishing an independent audit function (either legislative or elected) should contain the following key elements:

Organizational Independence – Establishment of the Audit Function

(Elected or Appointed) The (NAME OF OFFICE/DEPARTMENT) is hereby established.

(Appointed Auditor) The (CITY/COUNTY) Auditor shall be designated through appointment by a majority vote of the (LEGISLATIVE BODY).

<u>Term</u>

(Elected Auditor) The term of the Auditor shall be years.

(Appointed Auditor) The Auditor shall serve a minimum term of _____years, unless removed for cause by a vote of at least two-thirds of the legislative body. The Auditor may be reappointed at the end of the term of office.

<u>Nonpartisanship</u>

The position of the Auditor shall be nonpartisan.

Restrictions on Other Candidacy

Filing for an elective office over which the Auditor has audit jurisdiction will be the same as resignation, effective as of the date of filing.

Qualifications - Competent Leadership

The Auditor shall possess adequate professional proficiency for the job, demonstrated by relevant certifications such as Certified Internal Auditor (CIA), Certified Public Accountant (CPA) or Chartered Accountant (CA) or have an advanced degree in a related field with at least five (5) years of experience in government auditing, evaluation or analysis. The Auditor shall have a bachelor's degree in accounting, business administration, public administration or related field. If financial audits are performed, the Auditor must be a CPA or CA.

Compensation

The Auditor shall be compensated at a level consistent with the jurisdiction's department directors. Experience, performance, certifications and advanced degrees may be taken into account in determining compensation.

Funding

Sufficient funds shall be proposed and approved to carry out the responsibilities specified herein.

(Elected or Appointed) Auditor may include: The (CITY/COUNTY) Auditor's salary shall be set by the legislative body and reviewed annually. (In some jurisdictions, specific guidelines for the Auditor's salary and budget are established in the Charter or Code.)

Appointment of Employees

The Auditor shall have the power to appoint, employ, and remove such assistants, employees and personnel as deemed necessary for the efficient and effective administration of the affairs of the office and to prescribe their duties, scope of authority and qualifications.

Professional Development

Sufficient resources shall be made available to the Auditor and staff to ensure appropriate professional development, continuing professional education and compliance with applicable certification requirements.

Powers and Duties; Scope of Audits

The Auditor shall have authority to conduct financial and performance audits of all departments, offices, boards, activities, agencies and programs of the entity in order to independently and objectively determine whether:

- Activities and programs being implemented have been authorized by government Charter or Code, state or provincial law or applicable federal law or regulations and are being conducted and funds expended in compliance with applicable laws;
- The department, office, or agency is acquiring, managing, protecting, and using its resources, including public funds, personnel, property, equipment, and space, economically, efficiently, and effectively and in a manner consistent with the objectives intended by the authorizing entity or enabling legislation;
- 3. The entity, programs, activities, functions, or policies are effective, including the identification of any causes of inefficiencies or uneconomical practices;
- 4. The desired result or benefits are being achieved;
- 5. Financial and other reports are being provided that disclose fairly, accurately, and fully all information required by law, to ascertain the nature and scope of programs and activities, and to establish a proper basis for evaluating the programs and activities including the collection of, accounting for, and depositing of, revenues and other resources;
- Management has established adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls; and
- 7. Indications of fraud, abuse or illegal acts are v alid and need further investigation.

Standards

Audits shall be conducted in accordance with recognized government auditing standards.

Audit Committee

Note: An audit committee may be established in an advisory capacity to provide recommendations for the Auditor's salary, work program, review of the audit function and hiring of external auditors. An elected Auditor may consider establishing an audit committee to ensure the avoidance of any conflict of interest issues. Also, an appointed Auditor may prefer an audit committee independent of the entity's management and administrative services. The following describes a possible audit committee structure for an appointed Auditor.

 To ensure independence of the audit function, an audit committee is hereby established. The audit committee shall consist of _____ voting members; ____ (Council or Board Members) and ____ at-large members, who shall be appointed by the legislative body. The ____ at-large members shall be residents of the (CITY/COUNTY) with expertise in auditing, preferably internal or management auditing, and shall be either a Certified Public Accountant, Certified Internal Auditor, or Certified Management Accountant. (Add language requiring staggered terms.)

- 2. The audit committee shall consult with the (CITY/COUNTY) Auditor regarding technical issues and work to assure maximum coordination between work of the Auditor's office and external audit efforts.
- 3. The audit committee shall meet as needed to perform its duties but shall not meet less than once quarterly and shall be responsible for:
 - a. Reviewing the Auditor's annual plan and budget before submission to the legislative body.
 - B. Reviewing audit reports before the final audit report is issued;
 - c. Transmitting audit reports to the legislative body;
 - Monitoring follow-up on reported findings to assure corrective action is taken;
 - e. Reporting to the legislative body on problems or problem areas at such times as deemed appropriate;
 - f. Performing an evaluation of the (CITY/COUNTY) Auditor annually and reporting the results of the evaluation and effectiveness of the audit function to the legislative body;
 - g. Providing oversight of the external audit; and,
 - h. Evaluating the findings and recommendations of the peer review as required by recognized government auditing standards.

Audit Schedule

At the beginning of each calendar/fiscal year, the Auditor shall submit a one-to-five-year audit schedule to the legislative body or audit committee for review and comment. The schedule shall include the proposed plan, and the rationale for the selections, for auditing departments, offices, boards, activities, subcontractors and agencies for the period. This schedule may be amended after review with the legislative body or audit committee, but the Auditor shall have final authority to select the audits planned.

In the selection of audit areas and audit objectives, the determination of audit scope and the timing of audit work, the Auditor should consult with federal and state or provincial auditors and external auditors so that the desirable audit coverage is provided and audit effort is properly coordinated.

Access to Employees, Records and Property

All officers and employees of (NAME OF ENTITY) shall furnish to the Auditor unrestricted access to employees, information and records (including electronic data) within their custody regarding powers, duties, activities, organization, property, financial transactions, contracts and methods of business required to conduct an audit or otherwise perform audit duties. In addition, they shall provide access for the Auditor to inspect all property, equipment and facilities within their custody. If such officers or employees fail to produce the aforementioned access and/or information, the Auditor may initiate a search to be made and exhibits to be taken from any book, paper or record of any such official or employee, or outside contractor or subcontractor, except as governed by statute. Further, all contracts with outside contractors and subcontractors shall contain a "right-to-audit" clause and provide for Auditor access to the contractor's employees and to all financial and performance related records, property, and equipment purchased in whole or in part with governmental funds.

Agency Response

A final draft of the audit report will be forwarded to the audited agency and the chief executive officer for review and comment regarding factual content prior to its release. The agency must respond in writing, specifying (i) agreement with audit findings and recommendations or reasons for disagreement with findings and/or recommendations; (ii) plans for implementing solutions to issues identified; (iii) a timetable to complete such activities. The response must be forwarded to the Auditor within (SPECIFY TIME FRAME). The Auditor will include the agency's response in the report. If no response is received, the Auditor will note that fact in the transmittal letter and will release the audit report.

Audit Reports

Each audit will result in a report, written or in some other retrievable form. The report shall contain relevant background information and findings and recommendations, and shall communicate results to the audit committee, legislative body and/or management. The report shall also be available for public examination.

The Auditor shall submit each audit report to the legislative body and shall retain a copy as a permanent record. A copy shall be retained in accordance with public records law.

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Report of Irregularities

If, during an audit, the Auditor becomes aware of abuse or illegal acts or indications of such acts that could affect the governmental entity, the Auditor shall report the irregularities to the audit committee, the chief executive officer, legislative counsel or legislative body. In the case of an Auditor appointed by the chief executive officer, if the chief executive officer is believed to be a party to abuse or illegal acts, the Auditor shall report the acts directly to the legislative body. If appears that the irregularity is criminal in nature, the Auditor shall notify the chief prosecuting authority in addition to those officials previously cited.

Annual Report

The Auditor shall submit an annual report to the legislative body within (NUMBER OF DAYS) after the calendar/fiscal year indicating audits completed, major findings, corrective actions taken by administrative managers, and significant issues which have not been fully addressed by management.

Audit Follow-up

The Auditor shall follow-up on audit recommendations as practical to determine if corrective action has been taken. The Auditor may request periodic status reports from audited agencies regarding actions taken to address reported deficiencies and audit recommendations.

Contract Auditors, Consultants and Experts

Within budget limitations, the Auditor may obtain the services of Certified Public Accountants, qualified management consultants, or other professional experts necessary to perform audit work. An audit that is performed by contract must be conducted by persons who have no financial interests in the affairs of the governmental entity or its officers. The Auditor will coordinate and monitor auditing performed by certified public accounting firms or other organizations employed under contract by the (NAME OF ENTITY) to assist with audit related activities.

Contracting for the external audit will follow (NAME OF ENTITY)'s normal contracting processes. The selection of a certified public accounting firm for the annual financial audit must be approved by (LEGISLATIVE BODY).

Peer Reviews

The audit activities of the Auditor's office shall be subject to a peer review in accordance with applicable government auditing standards by a professional, nonpartisan objective group utilizing guidelines endorsed by the Association of Local Government Auditors (ALGA). A copy of the written report of this independent review shall be furnished to each member of the (LEGISLATIVE BODY).

The peer review will use applicable government auditing standards to evaluate the quality of audit effort and reporting. Specific quality review areas shall include staff qualifications, adequacy of planning and supervision, sufficiency of workpaper preparation and evidence, and the adequacy of systems for reviewing internal controls, fraud and abuse, program compliance, and automated systems. The peer review will also assess the content, presentation, form, timeliness, and distribution of audit reports. The (NAME OF ENTITY) shall pay for the costs of the peer review from the Auditor's budget.

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Association of Local Government Auditors

A Government Official's Guide to Establishing a Performance Audit Function

The Association of Local Government Auditors (ALGA) is providing this brief introduction to performance auditing to answer questions that local government officials frequently ask about establishing an independent performance audit function. We also list resources and include a brief survey to help you assess whether a performance audit function would benefit your organization.

Frequently Asked Questions

1. Q: What is performance auditing?

A: In a performance audit, auditors independently evaluate the performance and management of government programs or functions compared with objective criteria or best practices. The term performance audit can encompass a variety of objectives dealing with a government's use of public resources, use of authority, compliance with laws and regulations and delivery of public services.

2. Q: What do performance auditors audit?

A: Performance auditors measure program performance to assess whether and how programs can be improved. They may:

a) review program goals and objectives compared with actual results,

b) analyze the efficiency and effectiveness of alternative methods of service delivery,

c) determine whether programs comply with applicable laws, rules, regulations, or policies and procedures,

d) assess whether management reports are accurate and reliable,

e) determine whether assets are adequately safeguarded,

f) work to detect fraud or abuse and assess controls and risks to reduce opportunities for corruption, and g) identify emerging issues or risks before they become crises.

3. Q: What are the potential benefits of performance auditing in government?

A: Performance auditing strengthens public governance by enhancing the government's accountability to the public for its use and stewardship of resources and the extent to which the public's objectives are being achieved. Performance audits often recommend improvements in service delivery, identify potential cost savings or revenue opportunities, and detect and deter improper activity. An effective, independent performance audit function can increase credibility with the public, as well as external oversight agencies, granting authorities and bond markets.

4. Q: How can an internal office be independent?

A: In order to be independent in fact and appearance, auditors must be free from conflicts of interest and free from interference in how they conduct and report their work. Different reporting relationships can ensure that the audit function is independent of the areas subject to audit. The auditor can be elected, appointed by a legislative body, or report to a committee, the majority of whose members are independently elected or appointed and come from outside the areas subject to audit. Regardless of the reporting relationship, the auditor's reports should be made public. ALGA's Model Legislation provides sample legislation to help ensure the independence of the audit function, including reporting relationships; how the audit director may be appointed; how the audit director may be removed from office; appointment of employees; scope of audits and other duties; access to employees, records and property; and professional auditing standards. In addition, the audit function must have systems in place to identify, resolve, or report impairments to independence and must protect their independence by not performing management functions and by not auditing their own work.

5. Q: Who audits the auditors?

A: Audit organizations that follow professional standards are required to have periodic peer reviews by independent reviewers. Peer reviews determine whether the audit organization's internal quality control system is suitably designed and operating effectively to provide reasonable assurance of complying with applicable professional standards.

Perceived Obstacles

Obstacles to establishing an independent performance audit function in local government usually center around one or more of the following misconceptions:

- Too Expensive: Skeptics often cite the cost of auditing as a disadvantage. However, it is not uncommon for an audit function to realize annual returns on investment between 200% and 400%.
- Adversarial: Skeptics may view the implementation of a performance audit function as pitting management against the auditors. However, an effective audit director works hard to establish a respectful working relationship with management and staff. Auditors remain independent of operations but treat other employees with professionalism and respect.
- Lack of experience in area audited: Managers may be concerned that audit staff lack the real world experience necessary to understand and fairly evaluate their operations. Professional auditing standards require auditors to have the requisite knowledge and skills to complete individual assignments. Auditors don't need to be subject experts in the area under review, but need to be able to provide an independent perspective and conduct work objectively using auditing standards, generally accepted management practices and common sense as guides.
- Airing Dirty Laundry: Government audit reports are often public records, which can increase media interest and exposure of problems. An effective audit director reports findings, conclusions and recommendations in an objective, balanced manner and includes the views of responsible officials in the report. Such public disclosure provides greater accountability and increases the public's confidence in government operations.
- More Red Tape: Skeptics sometimes perceive that audit recommendations will generate burdensome policies, procedures and paperwork. However, an effective performance audit function minimizes organizational "red tape" as auditors ferret out policies, procedures and management practices that contribute to unnecessary and inefficient practices.

Self-Assessment Survey

The following self-assessment survey can help you assess whether establishing a performance audit function would benefit your local government. Answer the following questions "Yes" of "No" based on your current knowledge of the organization. Be as independent and objective as possible in responding. Be aware that you may have a tendency to be overly optimistic in your response.

1. Does a mechanismiexist within the organization that serves as a monitoring and oversight function over ut * government:performance?

2.11s the monitoring and oversight function organizationally independent of management? an and - 3. Does the management staff of your organization consistently provide relevant, timely and useful information regarding.government.performance?

2 4" Are you comfortable with the reliability of analytical and performance, related information provided?

5. In your government, when inefficiencies, poor performance or substandard program results are identified, are problems addressed and resolved within a reasonable period of time? "

6. Do you feel accurately informed regarding issues affecting your government?

7. Are you comfortable making a request for key management information regardless of political sensitivities or a desire to avoid utiling feathers?

8. Is there a sense in the community that government is accountable and responsible?

9 If you could invest personal funds in your government operations in a manner similar to a public for profit corporation, could you expect a reasonable return on your investment? 10. Are you proud of your government?

A No response to any one item can indicate reduced account ability and trustlin government operations. Consider getting in touch with ALGA for guidance on establishing an independent performance audit function if you answered No. to one or more questions. ALGA is a not-for-profit organization

Additional Resources Available to Assist in Establishing a Performance Audit Function

Association of Local Government Auditors (ALGA) 449 Lewis Hargett Circle, Suite 290 Lexington, KY 40503 www.governmentauditors.org

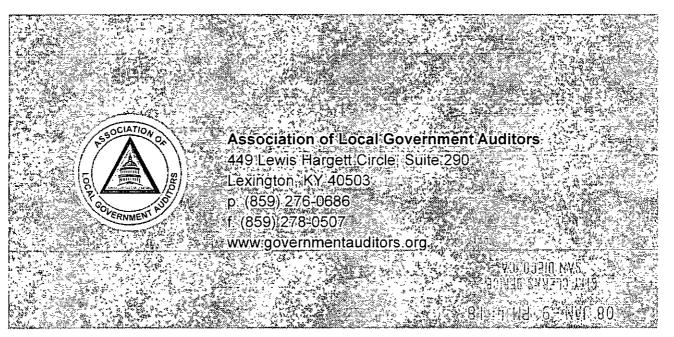
United States Government Accountability Office (GAO) Washington, D.C. 20548-0001 (202) 512-2600 www.gao.gov

> Institute of Internal Auditors (IIA) 247 Maitland Avenue Altamonte Springs, FL 32701-4201 (407) 830-7600 www.theiia.org

Association of Government Accountants (AGA) 2200 Mount Vernon Avenue Alexandria, VA 22301-1314 (703) 684-6931 http://agacgfm.org

Association of Certified Fraud Examiners (ACFE)

716 West Avenue Austin, TX 78701 (800)245-3321 www.acfe.com



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