

MEMORANDUM

DATE: January 15, 2015

TO: Honorable City Councilmembers on the Charter Review Committee

FROM: Norma Damashek

SUBJECT: Recommendations for your consideration re. Charter changes

My involvement with San Diego City charter changes spans the past fifteen years, both as an interested citizen and as past president of the city's League of Women Voters. During that time our Charter underwent important changes and by now could use a careful clean-up. I'm pleased that this committee is initiating the job and I would like to offer the following observations:

Charter clean-up and charter amendments are separate processes and require different approaches, even though both eventually require voter approval.

In terms of clean-up – we should have confidence in the abilities of the city attorney's office to identify Charter inconsistencies, to recommend clean-up provisions, to seamlessly incorporate "strong mayor" changes, and to bring your attention to other problematic issues.

In terms of Charter amendments to create policy changes – this process must involve active public participation and, depending on the scope of change, Charter Review Committee meetings may not suffice. A Citizens Charter Commission (appointed or elected) may be necessary.

But for right now I've got two easy suggestions that would greatly serve the public interest:

First, this would be a good opportunity to make active use of City TV to air a short series of talks to educate the public on how local government works. It could be an invaluable, entertaining, and informative civics lesson for all of us and would be easy and fun to put together.

Second, this would be a great opportunity to add a succinct preamble to our city charter. This preamble would remind our elected leaders as well as the public about the purpose and intent of city government and the city charter.

Here's a familiar example of a succinct preamble:

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves

and our Posterity, do ordain and establish this Constitution for the United States of America.

Here's how San Francisco handles it:

In order to obtain the full benefit of home rule granted by the Constitution of the State of California; to improve the quality of urban life; to encourage the participation of all persons and all sectors in the affairs of the City and County; to enable municipal government to meet the needs of the people effectively and efficiently; to provide for accountability and ethics in public service; to foster social harmony and cohesion; and to assure equality of opportunity for every resident: We, the people of the City and County of San Francisco, ordain and establish this Charter as the fundamental law of the City and County.

Here's how it's written in Riverside, CA:

We, the people of the City of Riverside believe in promoting an inclusive community with shared economic, environmental and cultural prosperity, equal civil and political rights, social harmony and cohesion, and opportunities for all governed by responsible and responsive public officials who promote citizen participation, as well as just and equitable tax and financial policies; and these beliefs are rooted in our desire to enhance the uniqueness of the City of Riverside.

Even Honolulu does it:

We, the people of the City and County of Honolulu, accepting responsibility to seek to achieve in our time that righteousness by which the life of our land is preserved and to encourage and enable our people to participate in their governance, so hereby adopt this Charter of the City and County of Honolulu.

I hope you see the benefits of creating an introductory preamble to the San Diego City Charter.

Respectfully,

Norma Damashek
ndamashek@ucsd.edu
858-459-8751

MK/ED

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

RECEIVED

JAN 14 2015

MEMORANDUM

OFFICE OF COUNCILMEMBER
SHERRI LIGHTNER

DATE: January 13, 2015

TO: Honorable Council President Sherri Lightner, Chair of the Charter Review Committee

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Recommended Update to the City Charter

In response to your memo dated December 18, 2014, we respectfully request that the Charter Review Committee consider and recommend language solidifying the existence of the Ethics Commission. The City Charter currently recognizes certain powers of the Commission, but also notes that the Commission is established through an ordinance adopted by the City Council. Although the Commission has historically enjoyed the support of the City's elected officials, this may not always be the case, particularly in light of the potential for enforcement activities involving such officials. Until the Commission's existence is established under the Charter, the Ethics Commission could be eliminated by Council action, without a public vote.

When voters overwhelmingly approved amendments to the City Charter in 2002 and 2004 to provide the Commission with subpoena power and independent legal counsel, they conveyed their support for the Commission's continued administration and enforcement of the City's governmental ethics laws. The requested City Charter amendment would serve to bolster that goal, and would prevent the potential for political repercussions by ensuring that only the voters could eliminate the Commission.

It is also relevant to note that the Ethics Commissions in Los Angeles, Oakland, and San Francisco are all established by the voters in their respective city charters.



Stacey Fulhorst
Executive Director

cc: Scott Chadwick, Chief Operating Officer
Prescilla Dugard, Deputy City Attorney



**COUNCILMEMBER TODD GLORIA
CITY OF SAN DIEGO**

MEMORANDUM

DATE: January 26, 2015
TO: Council President Sherri Lightner
FROM: Councilmember Todd Gloria 
SUBJECT: Charter Review Committee Priorities

In response to your memo dated December 18, 2014, I am pleased to offer my priorities for the Charter Review Committee.

Referendum Reform

Per my memo dated January 8, 2015, I requested to bring forward an informational item in early 2015 to the Charter Review Committee to explore potential measures that the City Council can consider to reform and increase transparency in the referendum process. Initial components of the local process that warrant further discussion include:

1. Providing more timely disclosure of referendum campaign funders for the benefit of the public;
2. Providing the opportunity for proponents and opponents to be present during the Registrar of Voters signature verification process;
3. Review of City of San Diego Charter Section 23: Initiative, Referendum and Recall, including local signature gathering requirements; and
4. Review of Municipal Code Article 7, Division 11: Referendum, including:
 - a. General updates to language for consistency, clarity and correctness;
 - b. Moving the petition formatting section to the City Clerk Administrative Guidelines to be consistent with recent updates to Municipal Code recall section and to allow for easier and more timely updates of material;
 - c. Updates and clarification of language in Section 27.1116: Withdrawal of Signature from Referendary Petition;
 - d. Clarification of language in Section 27.1117: Time for Submitting Referendary Petition to Clerk; and
 - e. Clarification of timeline related to Council action on sufficient petitions.

I would like to directly involve the City Clerk, the Ethics Commission, the City Attorney's office and the Independent Budget Analyst in this work, and look forward to input and direction from the Charter Review Committee.

Codifying Budget Process

Section 11 of the Charter clearly establishes the City Council's nondelegable power over "the adoption of any ordinance or resolution which raises or spends public monies, including but not limited to the City's annual budget ordinance..." .

Since the inception of a standing committee on the budget in 2008, the Council has worked with the offices of the Mayor and the Independent Budget Analyst to standardize a process to address issues of budgetary authority and establish frequent communication between the Executive and Legislative branches leading to the annual budget adoption and appropriation ordinance.

I would like the Charter Review Committee to discuss codifying elements of this process into Sections 69 or 290 of the Charter.

Elements of the current process that should be considered include the Mayor's Five Year Financial Outlook, the Statement of Budgetary Principles, the establishment of key budget dates including setting the annual budget hearings, and the Mid-Year Budget Monitoring Report. This discussion should include an evaluation of the annual appropriation ordinance as described in Charter Section 71 and whether that process should be separate from the adoption of the budget as suggested by the City Attorney's report dated February 5, 2014.

Additionally, I would like the Charter Review Committee to examine opportunities which allow the Council to reopen the budget for needed amendments as we currently do when accepting the Mid-Year Budget Monitoring Report.

Veto Authority Over Ballot Proposals

Charter Section 280 provides that the Mayor shall not extend veto authority over any matter exclusively within the purview of the City Council. Charter Section 275(c) states that ordinances calling or relating to elections may be enacted on their day of introduction. The City Attorney has offered an interpretation that this Charter Section only applies to the calling of elections and not individual ballot proposals approved by the Council for placement on a ballot. I would like the Charter Review Committee to examine this interpretation and decide whether the Mayor should have the authority to block ballot proposals approved by the City Council from going to the voters.

Authority and Duties of Interim Mayor

During my time serving as Interim Mayor, I found that Charter Section 265(i) had insufficient detail as to what authority was vested to the presiding officer of the City Council when filling a vacancy in the Office of the Mayor. I would like the Charter Review Committee to evaluate what authorities should be explicitly stated to provide clarity to anyone acting in the role of Interim Mayor.

Removal of Elected Officials

Currently only Charter Section 23 on recall and Section 108: Forfeiture of Office for Fraud offer ways to remove an elected official outside of death and resignation. Additionally, the Charter includes language by which Councilmembers may be removed due to excessive absences.

I would like the Charter Review Committee to hold a discussion and evaluate additional reasons and processes for removing an elected official from office. This discussion should include a

thorough evaluation for any unintended consequences and the effectiveness of each proposed reason for removing officials.

Cemetery Perpetuity Fund

Charter Section 55 establishes investment guidelines for the Cemetery Perpetuity Fund. The Charter limits funds available for maintenance or upkeep of the Mount Hope Cemetery to investment income, up to eighty percent of cemetery lot sales, and any other revenue generated from burial related services. It also requires the City to appropriate the remaining balance for maintenance from the General Fund which has ranged from \$227,000 to \$513,000 from FY2009 to FY2014 according to estimates from a 2013 IBA report.

There may not be a clear path to reducing the annual subsidy without exposing the fund to additional market risk, but I ask the Committee to evaluate whether Charter amendments are appropriate. I also ask that the Committee to consider removing direction appropriating this fund from the Charter and placing it in the Municipal Code to provide the City more flexibility for future changes.

Redistricting

It is my desire to see the language in Charter Section 5.1 on redistricting updated in time for the 2020 census and subsequent redistricting effort. A 2010 Grand Jury Report titled "City of San Diego 2010 Redistricting Commission" found that the current succession for the Appointing Authority for Redistricting Commissioners included alternatives that were inconsistent with ethical determinations made by a judicial ethics committee and current City structure. I would like for the Charter Review Committee to update the language on redistricting to ensure the next Redistricting Commission has clear and consistent direction.

Strong Mayor- Strong Council Clean Up Language

The City of San Diego switched over to the Strong Mayor-Strong Council Form of Governance in 2010, yet the majority of the Charter still references the City Manager. I ask the Committee to do a thorough review of outdated references to the City Manager and update as necessary to the Mayor, Chief Operating Officer, or appropriate designee.

TG/ag



MK

**OFFICE OF COUNCILMEMBER TODD GLORIA
CITY OF SAN DIEGO**

M E M O R A N D U M

RECEIVED

DATE: January 8, 2015

JAN 08 2015

TO: Council President Sherri Lightner

FROM: Councilmember Todd Gloria

OFFICE OF COUNCILMEMBER
SHERRI LIGHTNER

SUBJECT: Referendum Process Reform Measures

On Monday, October 20, 2014, the San Diego City Council approved placing a measure to increase the minimum wage and allow workers to earn sick leave before voters in June 2016.

Corporate interests opposing the measure went to extreme lengths through a well funded referendum effort to keep hard working San Diegans in poverty. Tactics used included telling potential signers outrageous lies like the petition was to increase the minimum wage, and paying out of town signature gatherers up to \$12 per signature. However, thanks to the work of our community partners, hundreds of people rescinded their signatures after learning the true purpose of the petition, and thousands were educated not to sign.

The documented deceit of the paid signature gatherers raises concerns over our referendum process that are worth examining. Referendums are meant to be a legitimate check and balance by the people and not means for a special interests with deep pockets to buy results that could not be attained through the public legislative process.

As such, I am calling for a careful review of the referendum process to ensure that it is functioning as a truly direct public process, and intend to explore the following issues with our state legislators:

1. Disclosure of and/or limitation of financing of paid signature gatherers;
2. Raising the percentage of signatures required per California Elections Code 9236(b); and
3. Regulating how and what information must be provided on the petition and ensuring petition gatherers use factual statements to attract potential signers.

While these reforms will require advocacy at the state level, there are also significant changes that can be made at the local level to make the referendum process more transparent. Initial components of the local process that warrant further discussion include:

1. Providing more timely disclosure of referendum campaign funders for the benefit of the public;
2. Providing the opportunity for proponents and opponents to be present during the Registrar of Voters signature verification process;

3. Review of City of San Diego Charter Section 23: Initiative, Referendum and Recall, including local signature gathering requirements; and
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 - d. Clarification of language in Section 27.1117: Time for Submitting Referendary Petition to Clerk; and
 - e. Clarification of timeline related to Council action on sufficient petitions.

I respectfully request to bring forward an informational item in early 2015 to the Charter Review Committee to explore these potential measures that the City Council can consider to reform the referendum process. I would like to directly involve the City Clerk, the Ethics Commission, the City Attorney's office and the Independent Budget Analyst in this work, and look forward to input and direction from the Charter Review Committee.

Thank you for your consideration of this request.

cc: Honorable Mayor Kevin Faulconer
Honorable City Councilmembers
Honorable Jan Goldsmith, City Attorney
Liz Maland, City Clerk
Stacey Fulhorst, Ethics Commission Executive Director
Andrea Tevlin, Independent Budget Analyst


TG:jl



**City of San Diego
COUNCIL PRESIDENT PRO TEM MARTI EMERALD
DISTRICT NINE
M E M O R A N D U M**

DATE: February 2, 2015 **Reference:** M-15-02-01

TO: Council President Sherri S. Lightner, Chair
Committee on Charter Review

FROM: Council President Pro Tem Marti Emerald 

SUBJECT: Charter Review Committee Priorities

This is in response to your memo dated December 18, 2014 regarding priorities for the Special Issues Committee on Charter Review. With the understanding that additional ideas may arise as we go through the process, I respectfully submit the following topics of concern for potential charter updates and modifications:

1. The Committee should take all necessary steps to solicit the maximum possible public input into the process.
2. To the greatest extent possible, make the charter language easy for the average citizen to understand and digest. Use plain language and minimize the amount of text.
3. Create an introductory passage outlining the purposes and goals of the San Diego City Charter.
4. To the extent possible, place the most significant proposed charter amendments on the General Election Ballot for 2016, as opposed to the Primary Election ballot. The purpose would be to allow for the greatest amount of participation by voters, who turn out in greater numbers for the general election. If necessary, place items that are merely housekeeping in nature on the primary ballot.
5. Reform the referendum process to reduce the potential for results to be influenced by a small number of people spending large amounts of money. Take steps to ensure that campaigns for and against referendum measures are conducted transparently and without willful deception.
6. Incorporate the language of Council Policy 500-09 Minimum Staffing for Fire Engines and Fire Trucks.

Page 2
Councilmember Marti Emerald
February 2, 2015

7. Examine whether the city needs to reform Charter Sections 26 and 26.1 in order to allow voters to consider having all users pay for refuse collection and thereby provide more General Fund revenue for public safety, infrastructure and other critical needs.
8. Remove the responsibility of setting Mayoral and Council salaries from the City Council. Look to the recommendations of the city's Salary Setting Commission.

ME/tt

cc: Honorable Members of the City Council



COUNCILMEMBER TODD GLORIA
CITY OF SAN DIEGO

MEMORANDUM

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RECEIVED

JAN 26 2015

**OFFICE OF COUNCILMEMBER
SHERRI LIGHTNER**

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TG/ag

PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

Jan I. Goldsmith
CITY ATTORNEY

February 5, 2014

REPORT TO THE CITY COUNCIL

2014 SAN DIEGO CHARTER LEGAL REVIEW

INTRODUCTION

On October 22, 2013, our Office provided the Council with a draft plan for a complete review of the San Diego Charter. A copy of the draft plan is attached. The review is necessary because our Charter contains provisions that are ambiguous, outdated and incomplete. This Report represents the completion of the first stage of the review outlined in my draft plan. It identifies sections of the Charter needing legal review and discusses possible options.

The legal issues we identified were provided by attorneys throughout the Civil Division to ensure we had a comprehensive list based upon impacts in all practice areas. Some Charter sections, especially those adopted with the original Charter in 1931, are outdated or superseded by State laws and can be repealed. Other provisions may be more appropriate as an ordinance codified in the San Diego Municipal Code. Many provisions may benefit from more public discussion and debate, especially if the proposal has both legal and policy considerations.

The Charter sections are listed in chronological order and include options prioritized for upcoming elections: Level 1 (November 2014), Level 2 (June 2016), or Level 3 (November 2016). In evaluating the timing, keep in mind that some proposals may require compliance with the Meyers-Milius-Brown Act (MMBA) before placing an amendment on the ballot. Also, amendments that alter any procedural or substantive protection, right, benefit, or employment status of any City employee, retiree, or employee organization must be submitted to the voters at a statewide general election.

We look forward to working with the Council and/or a Charter Review Commission to provide ongoing legal advice to improve the Charter. It is up to the Council to determine the process for considering these options.

DISCUSSION

Charter § 5.1 Redistricting Commission

Issues: During the redistricting process in 2010 and 2011, Charter section 5.1 required constant legal interpretation. After the redistricting process ended, a grand jury suggested the City clarify ambiguities and eliminate archaic provisions. The section needs greater clarity regarding how Commissioners are to be appointed, how many Appointing Authority members must be present to make the appointments, when the map takes effect, when the district boundaries change, what is the role of the City Council in the process, and how the Commission's budget is set. The section also needs to be amended to delete archaic references to the non-existent "Municipal Court." A detailed list of suggested changes can be provided in a report to City Council.

Options: Amend Charter section 5.1 to clarify ambiguous language, eliminate archaic provisions, and provide greater clarity for the issues identified above.

Level: 3

Charter § 14 Council Rules, § 94 Contracts, § 108 Forfeiture of Office for Fraud, § 217 No Payment for Office, § 218 No Contributions for Employment

Issue: Various sections of the Charter provide for the removal of officers under certain circumstances, but do not provide a uniform or consistent way for handling the removal of officers. Instead, in a patchwork quilt of provisions, the Council is sometimes tasked with adjudicating grounds for removal from office, and other times the Charter is silent, meaning the City must look to the courts to adjudicate the basis for removal. *See* City Att'y MOL No. 2013-13 (Aug. 14, 2013).

Charter section 14, for example, empowers the Council to decide disputes related to Council elections and the qualifications of Council members, and makes that decision subject to the review of the courts. This provision no longer applies to the Mayor as the Mayor is not a member of the Council. Other Charter sections provide the option of either an internal or a court process. Sections 217 (No Payment for Office) and 218 (No Contributions for Employment) both state that any officer or employee found guilty of the provision "by the Council or a court of competent jurisdiction shall thereby forfeit his office or position." Section 94 (Contracts), contains forfeiture language very similar to that contained in Section 108 (Forfeiture of Office for Fraud), but unlike Section 108, it states that violation of the section is a misdemeanor, thereby referencing a court process.

Options: Amend the Charter to clarify the means for adjudication of the grounds for forfeiture of elected office, whether exclusively by the Council, or by application to the courts, or both. A list of options for Council consideration would be provided as part of the ongoing review.

Level: 2

Charter § 18 Authentication and Publication of Ordinances and Resolutions

Issue: Charter section 18 requires that ordinances and resolutions “of a general nature” be published within 15 days after final passage in “such manner as may be provided by this Charter or by ordinance.” San Diego Municipal Code section 22.0102 restates the Charter language and provides that “the City Clerk shall cause . . . to be published” in the official city newspaper all ordinances or resolutions of a general nature within fifteen days of their final passage. The publication requirement for ordinances not subject to referendum has been held to be directory, rather than mandatory. (*See* 2009 City Att’y MS-753 (09-4; Mar. 16, 2009). Most resolutions are not subject to referendum and publication in the official city newspaper seems unnecessary as resolutions are made available online both before and after final passage.

Options: Amend section 18 to remove the requirement to publish resolutions in the official city newspaper.

Level: 3

Charter § 23 Initiative, Referendum, and Recall (Removal of Elected Officials)

Issue: Charter section 23 reserves the right of recall to the people of the City. However, the recall process can be lengthy and take several months. There are some occasions when an elected official should be removed from office more quickly, for example, when the official has engaged in misconduct or is incapacitated.

Options: Amend section 23 to provide a removal process for elected officials for misconduct or incapacity. The removal process could be combined with a recall initiated by the Council after due process to the elected official. Another option would be to have the decision to remove the elected official subject to review by the courts. (*See* section 14 above for discussion on forfeiture of office.) Attached is a preliminary review of what some other cities have on this issue.

Level: 1

Charter § 26 Administrative Code

Issue: Charter section 26 requires the Council adopt an “administrative code providing for the detailed powers and duties of the administrative offices and departments of the City.” Thereafter, any change in the ordinance requires a two-thirds vote of the Council. In 1997, this Office issued a Report indicating that the Manager (Mayor) has the power to reorganize departments under Charter section 27 and 28, however, such power is subject to any contrary or additional action by the Council if it chooses to act under Charter section 26.

Options: Amend to clarify whether reorganization of departments, including detailed duties is authority Council can delegate to Mayor or City Manager and review whether to keep the two thirds vote requirement.

Level: 3

Charter § 32.1 Responsibility of Manager and Non-Managerial Officers to Report to Council

Issue: Charter section 32.1 requires the Manager (Mayor) and “non-managerial officers” to inform the Council of all material facts or significant developments relating to all matters within the jurisdiction of the Council. It appears that this duty is self-executing and the Council does not have to make a request for information. However, the Charter is not explicit on this point. It also is not clear when the information must be provided to Council. Finally, there is no mechanism for enforcing the requirement to provide material facts.

Options: Amend section 32.1 to clarify that the duty to provide information is self-executing and information must be provided to the Council prior to its decisions to help ensure that they are fully informed. Consider whether to provide a mechanism for enforcement and if this mechanism could be placed in the Municipal Code instead of the Charter.

Level: 3

Charter § 35 Purchasing Agent and § 94 Contracts

Issues: These sections are outdated in a number of areas, specifically not in keeping with the current prevalent use of the Internet and with procurement practices, such as cooperative procurement. For example, the references to advertising in newspapers and “sealed proposals” does not take into account the direction in which the City is moving with electronic bidding.

Options: Amend to allow flexibility to comply with current technology and procurement practices.

Level: 3

Charter § 39.1 Audit Committee

Issues: This section provides that the three public members shall be appointed by the Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee. Except for the initial appointments, it has been difficult to find public members that are qualified and willing to serve, especially when a public member is seeking reappointment.

Options: Amend the section to eliminate the requirement that at least two candidates be recommended by the screening committee.

Level: 3

Charter § 39.2 Office of the City Auditor

Issue: Charter section 39.2 provides that the City Auditor reports to and is accountable to the Audit Committee. Upon recommendation of the Audit Committee, the City Auditor may be removed for cause by two-thirds vote of the Council. The Charter does not specifically provide that the Audit Committee may take lesser forms of discipline against the City Auditor for conduct that does not amount to cause for termination.

Options: Clarify that the Audit Committee may take lesser forms of discipline (warning, suspension, etc) against the City Auditor if necessary.

Level: 3

Charter § 40 City AttorneyIssues:

- (1) Contracts: Section 40 requires the City Attorney to prepare in writing all contracts and "endorse on each approval of the form or correctness thereof." The City enters into hundreds of contracts each year, including purchase orders and credit card purchases. It is not practical or reasonable to require the City Attorney to review and approve each separate contract if every purchase order is considered a "contract."
- (2) Other Instruments: Section 40 also requires the City Attorney to prepare and approve all "other instruments in which the City is concerned." The term "other instruments" is not defined in the Charter. As a legal term of art, it is subject to multiple variations in meaning.
- (3) Inconsistency on Review: There is an inconsistency between the City Attorney's duties in section 40 and section 280(b). Section 40 says the City Attorney signs for "form or correctness" and section 280 says "form and legality." The sections should be consistent.
- (4) Non-City Entities: This section states that the City Attorney is the chief legal adviser to the City and its departments and cannot engage in private legal practice. The issue has arisen on occasion whether the City Attorney can represent the interests of a non-City entity if that entity's interests are closely aligned with the City's interests.
- (5) Outside Counsel: Section 40 states that the Council is authorized to employ "additional competent technical legal attorneys" when such assistance or advice is necessary. The practice of requesting Council approval to hire outside counsel is inconsistent with the hiring of other City consultants. For example, the Council has delegated this authority to the City Manager for consultant contracts under \$250,000.
- (6) Counsel for SDCERS: Section 40 states that the City Attorney is the chief legal adviser and attorney for the City and all its departments and offices, "except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney." It does not address independent legal counsel for SDCERS which was recognized as necessary to fulfill its fiduciary obligations under the State constitution.

- (7) Qualifications: Charter section 40 does not include any qualifications for the City Attorney or require that the City Attorney be a member of the California State Bar. This issue was raised by the prior Charter Review Committee.

Options:

- (1) Review the contract approval process and provide recommendation for amendment to section 40 to clarify intended scope.
- (2) Amend to either delete reference to "other instruments" or provide clarification to establish intended scope, for example "financial instruments."
- (3) Correct inconsistency with section 280(b) regarding approval as to form or legality.
- (4) Amend the section to clarify whether, and under what circumstances, the City Attorney may represent the interests of a non-City entity. For instance, assuming there is no conflict of interest in the representation, the City may be able to realize substantial cost savings if the City Attorney represents a non-City entity in a matter of public interest where that entity's interests are closely aligned with the City's interests or where the City has contractually agreed to defend and indemnify the entity.
- (5) Amend section 40 to provide that SDCERS may have its own legal counsel independent of the City Attorney, in recognition of its fiduciary duties under article XVI, section 17 of the California Constitution, and the potential for conflicts of interest between SDCERS and the City.
- (6) Amend section 40 to require that the City Attorney be a member of the California State Bar in good standing. Consider adding a requirement that the candidate have a minimum number of years as an attorney.

Level: 3

Charter § 41(c) Planning Commission

Issues: With respect to the Planning Commission: (1) the list of duties is outdated and inconsistent with current ordinances and practice; and (2) since Planning and DSD sit with the Planning Commission consider whether they should be designated as ex officio members.

Options: Review duties and ex officio membership and determine appropriate amendments to the Charter or Municipal Code.

Level: 3

Charter § 41(d) Ethics Commission

Issues: With respect to the Ethics Commission, Charter section 41 provides that the Mayor appoints the members, subject to Council confirmation. Over the last few years, Councilmembers have suggested that these appointments should be done by someone other than the elected officials who are subject to the jurisdiction of the Ethics Commission. This has been especially problematic when a Councilmember is the subject of a confidential investigation and must confirm the appointment of members.

Options: Amend the Charter to allow appointments be made by a panel of retired judges or some other independent individuals or group. (See, 2009 City Att'y MOL 282 (09-14; Sep. 10, 2009).

Level: 3

Charter § 41.1 Salary Setting Commission

Issue: The Civil Service Commission appoints members of the Salary Setting Commission. When making the appointments, section 41.1 requires that the Civil Service Commission "take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community." Using sex and race as a factor may be prohibited by state and federal discrimination laws.

Options: Amend section 41.1 to delete the requirement to consider sex and race in making appointments and provide more appropriate language regarding appointments.

Level: 3

Charter § 42 Membership Selection

Issue: When making appointments to commissions, boards, committees or panels, the appointing authority is required to "take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community." Using sex and race as a factor may be prohibited by state and federal discrimination laws.

Options: Amend section 42 to delete the requirement to consider sex and race in making appointments and provide more appropriate language regarding appointments.

Level: 3

Charter § 69 Fiscal Year and Manager's Estimate

Issue: This provision is dated with respect to the Mayor-Council form of government and requiring the printing of the proposed budget. The City's budget process and relationship between the Mayor and Council should be codified in Article XV. This would obviate certain annual actions such as the adoption of the Statement of Budgetary Principles and locate all relevant budget provisions in one place.

Options: Repeal Charter section 69 and add a modernized budget section or sections in Article XV. The Los Angeles City Charter may be a useful model.

Level: 2

Charter § 70 Power to Fix Salaries

Issue: This section relates to preparation of the annual Salary Ordinance. It states that all increases and decreases of salary or wages of officers and employees must be determined at the time of preparation and adoption of the Salary Ordinance and modifications during a fiscal year may only occur based upon required specific determinations by the Council. However, this limitation does not recognize that the meet and confer obligations of the City under the MMBA may not have been met by the time of adoption of the Salary Ordinance. Section 290(a) recognizes that the Salary Ordinance must be proposed by the Mayor in a form consistent with any existing memoranda of understanding or otherwise in conformance with the MMBA.

Options: Delete limiting language and conform to Charter section 290 and the MMBA.

Level: 2 or 3

Charter § 71 Preparation and Passage of Annual Appropriation Ordinance

Issue: The Appropriation Ordinance enacts the adopted budget and delegates certain authorities to the Chief Financial Officer to administer the budget during the fiscal year. There is no particular reason why this action is separate from the adoption of the budget. Moreover, any necessary authorities could be specified in the Charter or the Municipal Code. Adoption of the Appropriation Ordinance adds at least two weeks to the City's budget process.

Options: Repeal Charter section 71 and incorporate appropriation language into Charter section 290 or nearby.

Level: 2

Charter § 71A Reappropriations at Beginning of Fiscal Year for Salaries and Maintenance and Support Expenses

Issue: This section allows for the continuing appropriation of funds from the prior year's budget if the Council fails to adopt the Appropriation Ordinance on time. This does not need to be a stand-alone section and should be incorporated with the other appropriation provisions.

Options: Repeal Charter section 71A.

Level: 2

Charter § 75 Annual Tax Levy

Issue: This provision has generally been superseded by Proposition 13. The only tax levy imposed citywide by the City is the Zoo tax.

Options: Provision could be simplified to state any legally authorized taxes shall be levied not later than July of each fiscal year and transmitted to the tax collector.

Level: 3

Charter § 76 Limit of Tax Levy

Issue: This provision has been superseded by Proposition 13 and can be removed.

Options: Repeal provision.

Level: 3

Charter § 76.1 Special Taxes

Issue: This provision restates the requirements of the California Constitution and can be removed.

Options: Repeal provision.

Level: 3

Charter § 77B Public Transportation

Issue: This provision allows for an ad valorem property tax to be imposed to fund public transportation. Because the City did not levy this tax in Fiscal Year 1982, the City is now prohibited from doing so.

Options: Repeal provision.

Level: 3

Charter § 77 Capital Outlay Fund

Issue: This provision requires funds from the “sale of city owned real property” to be deposited in the Capital Outlay Fund. It does not define what is City owned property and there is no legislative history to provide further guidance. Under general real property law principles, it could be interpreted to apply only to property owned in fee or to other lesser interests in real property, such as easements. The interpretation has potentially significant impacts on departmental budgeting. Therefore clarification is recommended.

Options: Revise to clarify the intended scope of real property interests intended to be affected.

Level: 1

Charter § 84 Money to be Drawn from Treasury in Accordance with Appropriation

Issue: This provision refers to other Charter sections that have since been repealed or amended.

Options: Provision could be simplified to reflect City’s current practice, which also conforms with existing requirements.

Level: 3

Charter § 86 Disposition of Public Moneys

Issue: There is a conflict between Charter section 86 and Government Code section 50050 with regard to the time period that the City must hold unclaimed money before it escheats to the City’s General Fund. Charter section 86 requires that such funds be held for only one year and does not require that notice be provided. Government Code section 50050 requires that such funds be held for at least three years and requires published notice. It is unclear whether the amount of time that unclaimed public funds must be held constitutes a municipal affair or is a matter of statewide concern. Apparently, in the abundance of caution, the City is currently following the process under state law.

Options: (1) Amend Charter section 86 to eliminate the one year period for unclaimed City funds to escheat to the City’s General Fund; or (2) Maintain the existing language regarding the one year holding period, but amend Charter section 86 to include an appropriate notice provision before such funds escheat to the City’s General Fund. If the latter option is implemented and challenged, a court would determine whether the matter of unclaimed public money held by a City is a municipal affair or a statewide concern.

Level: 3

Charter § 90.1 Waterworks and § 90.2 Sewer

Issue: These provisions deal, respectively, with the issuance of water bonds and sewer bonds. Each is approximately six pages long. Neither is actually used by the City to issue water or sewer bonds. These bonds are generally revenue bonds issued by a Joint Powers Authority or other applicable law.

Options: Both of these sections could be repealed.

Level: 3

Charter § 91 General Reserve Fund

Issue: This section is internally contradictory as it speaks of a "revolving fund" that can be expended only in case of emergency. Changes made to the section in 1962 made it less clear.

Options: This section should revert to the pre-1962 language or be revised to more clearly state that the purpose is to require the City maintain sufficient cash on hand to meet all demands against the treasury until receipt of property taxes. The name could also be changed to avoid confusion with other reserve funds.

Level: 3

Charter § 99 Continuing Contracts

Issue: The following language in this provision has presented multiple issues of legal interpretation and confusion over the years:

No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.

It has been generally settled that the provision applies only to contracts creating a financial obligation on the part of the City although clarification of this interpretation would be helpful.

Options: Deputies have recommended clarification in a number of areas:

- (1) Provide an exception for license and software maintenance agreements and for music/motion picture license agreements. This suggestion was based upon unique issues associated with software and music licenses and with software maintenance contracts (hundreds of which were inherited from San Diego Data Processing Corp upon its dissolution).
- (2) To read consistent with City Attorney memos, revise "no contract, agreement, or obligation extending for a period of more than five years may be authorized except by . . ." to state only those contracts, agreements, or obligations creating

financial expenditure obligations (versus, for example, standard City leases where City is lessor and there is no public expenditure).

- (3) Consider further clarification to provide that the limitation only applies to those contracts, agreements, or obligations with financial obligations that will arise/become due in more than five years.

Level: 3

Charter § 110 Claims Against the City

Issue: Charter section 110 provides a 100-day time limit in which to file claims for damages for injuries to person or property due to City or City officer negligence, and claims for money the City may be obligated to pay a person by contract or operation of law. By contrast, Government Code section 911.2(a) of the Claims Act provides that claims "shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action." The City's 100-day limit raises a possible state preemption issue. *See, Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 246-247 (1942) (charter provision specifying longer time limit than provided in Claims Act was preempted).

Options: Amend section 110 to provide that claims shall be submitted in accordance with state law.

Level: 3

Charter § 113 Official Advertising

Issue: Charter section 113 deals with official advertising for bids. The section should be reviewed to see if print advertising should be replaced with internet advertising on the City's website. See section 114 below regarding using the "City Bulletin" for official advertising and possible changes to internet communications.

Options: Amend section 113 to update advertising for bids. Also consider issues related to sections 35 (Purchasing Agent) and 94 (Contracts) discussed above.

Level: 3

Charter § 114 Bureau of Information and Publicity

Issue: This section provides that the Council *may* establish a Bureau of Information and Publicity to be given a number of duties – many of them similar to a public information officer and overlapping with functions currently carried out by the City Clerk. This section also allows for the "City Bulletin" as a means of providing information relating to the affairs of the City and official advertising. Because the establishment of the Bureau and its duties is permissive, it is not a direct legal issue. Nonetheless, the section should be reviewed in light of open data and other open government policies.

Options: Consider elimination or clarification with respect to other transparency laws.

Level: 3

Charter § 117(c) Unclassified and Classified Services

Issue: This section was added by Charter amendment in 2006 to provide authority for the City to hire an independent contractor as an alternative to employees in the classified service when the Mayor determines, and the Council agrees, that the City services can be provided more economically and efficiently by an independent contractor than by persons in the classified service while maintaining service quality and protecting the public interest. However, the Charter-mandated process is ambiguous. The section should be clarified to address issues, including whether there are circumstances in which the Mayor may make the required determination by using other means to compare City forces to the cost and efficiency of a contractor (such as budget figures), and whether the Mayor has to use the Managed Competition Independent Review Board.

Options: Resolve ambiguities and propose amendments through meet and confer process with the City's impacted employee organizations.

Level: 3

Charter § 118 Rules

Issue: There is no discussion or recognition in this section as to how the Civil Service Commission, in recommending new Civil Service Rules (Rules) or modifications to Rules, interacts with the meet and confer process required under the MMBA. Language in Charter section 118 that explains that any rule change that relates to a mandatory subject of bargaining under the MMBA is subject to the MMBA would be appropriate. However, this is not necessarily a legal problem because under clear California authority, the City's Charter must be read in conjunction with the MMBA. Therefore, section 118 and the Civil Service Commission process for recommending Civil Service Rule changes must recognize the MMBA, whether it says so in the Charter or not.

Options: Add the following language: "The City Council must ensure compliance with the Meyers-Milias-Brown Act or other state or local law related to collective bargaining before it adopts any new rule or amendment to an existing rule that involves a mandatory subject of bargaining."

Level: 2 or 3

Charter § 129.1 Removal of Striking Employees

Issue: Charter section 129.1 provides limitations on the ability of City employees to engage in “strike” activities. This provision, which was adopted in 1976, is not consistent with current California law. Given the current state of California case law, Charter section 129.1 is overly broad and likely subject to challenge. *See, City of San Jose v. Operating Engineers Local Union No. 3*, 49 Cal. 4th 597, 601 (2010), stating that common law “allows public employees to go on strike to enforce their collective bargaining demands unless the striking employees perform jobs that are essential to public welfare.” The Court further explained that a threatened strike may be unlawful if it creates “a substantial and imminent threat to public health and safety.” *Id.* at 606. Closer review of this provision should be done to conform to controlling state law.

Options: Recommend engaging in meet and confer to develop revisions narrowing the language to conform to state law.

Level: 2 or 3

Charter § 140 Establishment of Separate Retirement Pension Systems; Definitions

Issue: This section was added by Proposition B. It provides that all officers and employees who are initially hired or assume office after the effective date of this section (July 20, 2012) may participate only in defined contribution plans and not in SDCERS (the defined benefit plan), with the exception of sworn police officers. As a result, police recruits participating in the City’s police academy must participate in an alternate defined contribution plan for the six months they are in the academy, and must move to the defined benefit plan when they become sworn officers. It is inefficient to have them contribute for such a short period of time in a defined contribution plan.

Options: Amend section 140 to allow police recruits participating in the City’s police academy to participate in the defined benefit plan.

Level: 3

Charter § 142 Employment of Actuary

Issues: Section 142 references “subdivision (k) of Section 118 of Article VIII of this Charter.” Due to amendments to section 118 in the 1940’s, subdivision (k) was removed from the Charter.

Options: Amend to delete the reference to section 118(k).

Level: 3

Charter § 144 Board of AdministrationIssues:

Section 144 provides that seven of the 13 members of the SDCERS Board be appointed by the Mayor and confirmed by the Council, and that these Board members have the following qualifications: "a college degree in finance, economics, law, business, or other relevant field of study or a relevant professional certification. In addition, such appointees shall have a minimum of fifteen (15) years experience in pension administration, pension actuarial practice, investment management, real estate, banking, or accounting." Currently, all seven Board members in the category have a financial background, and none have an investment background.

Options:

Amend section 144 to require more diversity of backgrounds of the appointed trustees, possibly requiring that some number of appointed trustees have a background in institutional investing.

Level: 3**Charter § 145 Retirement Fund**

Issue: The first sentence of section 145 states that all employee and employer contributions under this Article "shall be placed in a special fund in the City Treasury to be known as the City Employees' Retirement Fund, which said fund is hereby created." However, California Constitution, article XVI, section 17, subsection (a) gives the board of a public retirement system "the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system."

Options: Delete the first sentence of section 145 and add a statement, consistent with the California Constitution, recognizing the Board's sole and exclusive authority over the assets of the retirement system.

Level: 3**Charter Article X Transfer of Police and Fire Department Employees into the Retirement System**

Issue: This Article consists of one section, which in 1946 transferred the members of the City's Police and Fire Departments from their independent retirement system into the CERS retirement system described in Article IX. This language is no longer needed.

Options: Repeal Article X.

Level: 3

Charter § 215 Publicity of Records and § 216 Copies of Records

Issue: These sections were adopted with the original Charter. Since then, the California Public Records Act was enacted and requires that the City allow the public to inspect and copy documents unless an exception applies. Sections 215 and 216 are no longer necessary and may conflict with state law.

Options: Consider repeal as the sections are no longer required.

Level: 3

Charter § 219 Pueblo Lands

Issue: Currently, the language in section 219 is unclear and reads too broadly. Recommend revising the last sentence ("No lease shall be valid for a period of time exceeding 15 years.") to state the section only applies to leases of those Pueblo Lands covered by the section. Also, the section should be revised to limit applicability of the section to only those Pueblo Lands north of the San Diego River actually City-owned when the predecessor of Section 219 was adopted in 1909, and which have remained in continuous City ownership since that time. *See*, 1999 Op. City Att'y 40 (99-2; Jul. 15, 1999).

Options: Clarify language to read consistent with City Attorney memos.

Level: 3

Charter § 225 Mandatory Disclosure of Business Interests

Issue: Charter section 225 requires that the person applying or bargaining for any right, title or interest in the City's real or personal property, or any right, title or interest arising out of a contract, or lease, or any franchise, right or privilege may be granted pursuant to section 103 or 103.1, must make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the application or proposed transaction and the precise nature of all interests of all persons therein. The term "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity. The City has had difficulty complying with this provision given the large number of contracts and leases the City enters into each year. Also, the requirement to disclose "any and all persons directly or indirectly involved" is extremely broad.

Options: Review section 225 to clarify intent and scope of the terms to help ensure compliance with the provision. Consider amending to include only persons with a direct and substantial interest in the application.

Level: 3

Charter § 226 Super Majority Vote Requirements

Issue: Charter section 226 was ordered reformed by the court in *Howard Jarvis Taxpayers Assn. v. City of San Diego*, 120 Cal. App. 4th 374 (2004). The court ordered section 226 to read as follows:

(a) Notwithstanding any other provision of this Charter, any ballot proposal, initiative, statute, law or regulation of any type, except amendments of this Charter whether proposed to be adopted by the electorate, the City Council, or any other body acting pursuant to this Charter or the Municipal Code, that requires a vote of the electorate in excess of a simple majority for any matter, must itself be approved by a vote of the electorate in the same proportion as proposed, in order to be adopted, valid or otherwise effective.

(b) This section may be adopted by a simple majority vote.

Options: Amend section per court order.

Level: 3

Charter § 265(b)(8) The Mayor (Role of the City Manager)

Issue: Charter section 260 states that “all executive authority, power, and responsibilities conferred upon the City Manager . . . shall be transferred to, assumed, and carried out by the Mayor.” However, the Charter contemplates a role for the City Manager who is appointed by the Mayor, subject to Council confirmation.

The Charter section 260 reference to the City Manager’s “executive” authority rather than “administrative” authority causes some ambiguity about Mayor’s role in the day-to-day administration of the City. Charter section 265(b)(8) states that the Mayor has sole authority to “direct and exercise control over the City Manager in managing those affairs of the City under the purview of the Mayor.” This implies that the City Manager manages the day-to-day affairs of the City with oversight and direction from the Mayor. The requirement that the Council confirm the Manager’s appointment suggests that the Manager plays an important role in the day-to-day administration of the City.

Options: Amend section 265(b)(8) to clarify the City Manager’s role.

Level: 3

Charter § 265(i) The Mayor (Council President's Duties and Authority During Mayoral Vacancy)

Issue: This section is unclear as to the authority of the Council President in exercising discretion during a Mayoral vacancy. Although couched in terms suggesting a "caretaker" role, authority to direct and control the City Manager is arguably inconsistent with such a role. The Council President's authority to make Mayoral appointments also should be clarified.

Options: Clarify scope of authority to be given to Council President in the event of Mayoral vacancy.

Level: 3

Charter § 275 Introduction and Passage of Ordinances and Resolutions

Issue: Charter section 275(d) states: "Each ordinance shall be read in full prior to passage unless such reading is dispensed with by a vote of five members of the Council, and a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage." The requirement of a written copy for each Council member is outdated as the City moves to electronic Council agendas. Also the reading requirement is routinely waived as the reading of an ordinance during a Council meeting is impractical in most cases.

Options: Amend section 275(d) to eliminate the requirement that the ordinance be read in full. Add the words "or electronic" to allow written or electronic copies of ordinances be provided to the Council and public.

Level: 3

Charter § 280 Approval or Veto of Council Actions by Mayor

Issue: Charter section 275(c) provides that certain ordinances may be passed by the Council on the day of their introduction: (1) ordinances making the annual tax levy; (2) the annual appropriation ordinance; (3) ordinances calling or relating to elections; (4) ordinances recommended by the Mayor or independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance; (5) ordinances establishing or changing the grade of a public highway; and (6) emergency ordinances as defined by section 295 of this Charter. These ordinances are not subject to the 30-day referendum period.

Charter section 280 makes all of these ordinances subject to veto, except for the annual appropriation ordinance and emergency ordinances. The veto process can extend the timeline for final passage of these ordinances by 14 to 44 days if Council reconsideration is required. This is especially problematic for ordinances calling or relating to elections. These election items are subject to other election deadlines, are within the Council's purview, and often are ministerial (e.g. calling elections and certifying the results of an election). Also, state law prohibits the Mayor's veto of a proposed Charter amendment.

The ordinance making the annual tax levy is a matter within the legislative power to tax. The annual levy is tied to the annual appropriation ordinance and the Mayor will have already had an opportunity to present the budget and veto the budget resolution. Giving the Mayor an additional chance to veto the annual tax levy would send the Council back to the beginning of the budget process. This could cause uncertainty within the City.

Options: Amend the Charter to provide that ordinances that take effect on the day of introduction are not subject to Mayoral veto.

Level: 2

Charter § 290 Council Consideration of Salary Ordinance and Budget; Special Veto Power

Issue: Changes discussed above in sections 69 and 71 regarding budget and appropriations would require additional changes here.

Options: See above.

Level: 2

CONCLUSION

The Charter sections identified above would require a fuller legal analysis to determine appropriate language for any amendments. As the Charter review process continues, it is anticipated that other sections may be identified for legal review. Given the number of potential amendments the Council may want to consider adopting a more streamlined and modern Charter. In either case, we are available to provide assistance upon further direction from the Council.

JAN I. GOLDSMITH, CITY ATTORNEY


By /s/Paul E. Cooper
Paul E. Cooper
Executive Assistant City Attorney

PEC:PMD:CB:sc
Attachments
RC-2014-3
Doc. No. 713088

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: October 22, 2013
TO: Mayor and Members of the City Council
FROM: City Attorney Jan Goldsmith 
SUBJECT: Charter Reform

DRAFT PLAN

Our City Charter contains provisions that are ambiguous, outdated and incomplete. In addition, key governance issues are not addressed in the City Charter. For example, there is no express provision setting forth authority and responsibility regarding labor negotiations. Nor, is there a provision that addresses incapacity of the Mayor or City Attorney. The appointment process for commissions and boards is incomplete and the elections process is inconsistent with portions of state law. As a result, our office is often faced with interpreting City Charter provisions without clear language in the Charter.

I believe a complete Charter review is needed. After all, this is our local Constitution, the highest law in our City.

This brief memo provides background and timelines that may be helpful in announcing a comprehensive Charter review involving our office. We recommend five stages:

1. Our office will lead a legal analysis to identify sections of the Charter needing review and options that might be available. We would solicit input from attorneys from the community and would retain outside experts to assist. This work would be done in law libraries and not in a public setting, but the results would be presented in a public report to the City Council by the end of January.
2. The City Council would create a Charter Review Commission before the end of January. Membership could consist of City Council members and/or members of the community. The purpose would be to take ideas from the legal team and the City Council out into the community for public input.
3. Schedule the election-related amendments now before the Rules Committee for the

June 2014 primary. One or two other proposals from the City Council might be added.

4. Schedule high priority changes for the November 2014 ballot.
5. Schedule the bulk of amendments for the 2016 ballot.

DISCUSSION

1. Governing Law for Charter Amendments

Charter section 223 and the California Constitution govern amendments to the San Diego City Charter. State law governs the placement of a Charter amendment on a municipal ballot, even in a Charter city such as San Diego.

A new law passed by the California Legislature in 2013 prohibits certain Charter amendments from appearing on any ballot but a general election, citywide ballot. The next such election will occur November 4, 2014. When a Charter amendment measure is proposed, our office would review its text to determine if it may appear on any other ballot.

2. A Pending Charter Amendment Regarding Elections is Targeted for the June 2014 Ballot

The City's Committee on Rules and Economic Development, as directed by Committee Chair Sherri Lightner, has been conducting an overview of the City's election laws with our office to place related Charter amendments on the ballot. Our office has prepared a draft ballot measure that is expected to be placed on the June 2014 ballot. The measure will extend deadlines for City special elections to fill a Councilmember or Mayoral vacancy, and will change the date of the inauguration of City officials. The Rules Committee has directed our office to finalize this measure and bring it to the Council in January for placement on the June ballot. Although the Committee has asked our office to review many other election law issues, it has not asked us to prepare any other measures. The public can bring in other proposals for the Council's consideration in January.

3. Potential Amendments to the City Charter

Deputy City Attorneys will be very helpful in reviewing the specific areas of the Charter they routinely interpret, to determine where language most needs amendment. Our Deputies work with City departments on a daily basis and can identify issues. For example, the Charter requires that all contracts be drafted and signed off by the City Attorney's office. The problem is that purchase orders, amendments and change orders are all deemed contracts. Requiring our office to sign off on everything could shut the City down.

Our intent is to solicit input from our Deputy City Attorneys and City departments, explore options and set them out for the City Council by late January. We would invite attorneys with special expertise to volunteer to assist and would want to retain an expert consultant. That consultant would assist us and then continue on as consultant to the Charter Review Commission.

Timeline and Process of Amendments for the November 2014 Ballot

Given the short timeframe before measures are due for a June 2014 ballot, initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot.

City Council Policy 000-21 establishes the procedure for submittal of ballot measures that would appear on that ballot. Members of the public submit proposals to the City Clerk, who then transmits them to the Rules Committee for review and comment. In 2014, proposed measures will no longer be sent to the Rules Committee, but instead will be sent by the Council President to any Council committee on which he or she is a member. This is due to recent amendments to the Council's Permanent Rules, found in the Municipal Code.

Ballot proposals must be submitted in time for the Clerk to list them on a Council Docket at least 127 days prior to the November 2014 election, so the public will know what the Council committee will review. Although the deadlines for the November 4, 2014, election remain tentative and have not been published, we have received these projected deadlines from the City Clerk's Office:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	6/6/14	151	LAST DATE (10:00 a.m.) for public, departments and agencies to submit ballot proposals to City Clerk for review by Council Committee
Wednesday	6/11/14	146	Council Committee review
Monday	6/16/14	141	Council Docket (PUBLIC NOTICE) lists proposals referred by Council Committee
Monday	6/23/14	134	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	7/14/14	113	Council adopts ordinances prepared by City Attorney
Friday	8/8/14	88	Last day for City Clerk to file with Registrar of Voters all elections material

Honorable City Councilmembers
October 22, 2013
Page 4

Thursday 8/21/14 75 Last day to file ballot arguments with
City Clerk

Thus, initial drafts of proposed Charter amendment measures for the November 2014 ballot should be prepared well before June 2014, which is only eight months away. A more comprehensive revision of the Charter can target the November 2016 ballot, with the draft due on the same timeframe (June 2016).

Additionally, to the extent it may be helpful, we have attached two documents from the City's last Charter Review Committee, which convened in 2007. One document is the Executive Summary that accompanied the Committee's final report; the other is the memo from former Mayor Sanders that was distributed when the appointments were made. As our office served as counsel to the Committee and its subcommittee, we have additional materials that may be helpful as the process begins.

CONCLUSION

Initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot. State law indicates a preference for all Charter amendments to be heard at a citywide, general election and requires some to only appear on such a ballot.

Measures that will appear on the November 2014 ballot need to be finalized by June and adopted by the Council no later than July 14, 2014. The measures would first be reviewed by a Council committee, and then placed on the ballot by the City Council. As cost will also be an issue, initial measures could be proposed for 2014 and a more comprehensive Charter revision can be planned for the November 2016 general election ballot.

JG:cs

Attachment: What Is the City Charter -- and How Does It Affect Me?

What Is the City Charter--and How Does It Affect Me?

Prepared by the San Diego Charter Review Committee

The Charter is the "Constitution" for the City of San Diego. Just as the United States Constitution serves as the "supreme law of the land" for our country, the San Diego Charter serves as the basic set of rules for our City government. The San Diego Charter limits City officials in much the same way that the Constitution constrains the officials of the federal government. They are not allowed to pass any law or act in any way the Charter prohibits.

The Charter establishes the boundaries that San Diego's people have imposed upon their City government. It is the source of the City's system of checks and balances, prescribing the relationship between the two branches of government: the Mayor and the City Council and the interaction of the City Attorney with both. The Mayor's authority to recommend policies, the Council's power to enact policy subject to Mayoral veto, and the Mayor's control over the implementation of City policy are all established by the Charter as the City's basic law.

The Charter Review Committee

The Mayor and City Council have recognized that there are a number of areas within the City Charter that require clarification or modification. Consequently, the Mayor and the Council have assembled a Committee of Independent, qualified and broadly representative members of the community to take on the task of addressing the ambiguities and problems of the current Charter.

Mission Statement

The San Diego Charter Review Committee's mission is "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 has established a work-plan to help achieve this important mission.

How Does the Charter Affect Me?

The Charter is the vehicle through which the people of San Diego limit and control the powers and responsibilities of their City government. If it is clear and consistent, it can allow voters to reward and punish City officials for their job performance. If it is vague, it makes it difficult for officials to act on behalf of the public. The City provides many services through responsible use of taxpayer dollars. If the Charter provides the opportunity for accountable leadership, the City can improve the quality and quantity of services delivered to the public. Otherwise, City officials are hamstrung in the performance of their duties, and cannot provide San Diego with the quality of public service that our City deserves.

Meeting Dates and Times

The Charter Review Committee and its three subcommittees are meeting every Friday from 9 a.m.-12 noon on the 12th floor of the City Administration Building, 202 C Street, San Diego, CA 92101. Please come in and make your voice heard.

We are also holding several public meetings throughout the City during evening hours so that we can elicit further public input on how the Charter can be improved.

The S.D. Charter Review Committee is online at <http://www.sandiego.gov/charterreview>

Historical Background

San Diego has had several different charters since this City became part of the United States in 1850. The City is presently governed under the terms of the Charter of 1931. This document has been amended hundreds of times in the past 76 years. The most significant changes increased the size of the City Council from six to eight members, provided for electing City Council members by district elections, and transformed the City from a Council-Manager to a strong Mayor-Council form of government.

Elected Offices

The Charter mandates the structure of City government. Among other things, this document establishes the number of officials who are elected to serve the public, the number of districts from which they are elected, which officials are to be elected citywide, and how much authority elected officials may exercise. The Charter also determines how City elections shall be conducted, including the process for redistricting.

Under San Diego's current Charter, the City is governed by a Mayor and City Council members elected by eight districts. The Charter also provides for the election of a City Attorney on a citywide basis. The City Attorney generally rules on the legality of ordinances considered by the Council and approves most contracts involving the City or any of its officers or agencies.

Appointed Offices

There are several important appointed officials whose roles and duties are prescribed by the Charter. The Chief Operations Officer (formerly, City Manager), Auditor and Comptroller, Treasurer, Independent Budget Analyst, and the chiefs of the Fire and Police departments, are all officers whose positions are established by the Charter. Some of these officers have their duties spelled out in great detail, such as the Auditor and Comptroller. Others have whatever powers are given them by a specific City ordinance, such as the Independent Budget Analyst.

There are several important boards and committees that are established by the Charter. The Charter provides for the Board of Administration of SDCERS, which administers the retirement system for City employees. The Charter provides for the appointment of a Civil Service Commission and specifies the powers of the Ethics Commission, which are authorized to oversee the integrity of the City's employment and governmental processes.

The Charter also establishes the manner in which other City agencies, boards, committees and departments may be created and staffed by the Mayor and City Council. For several agencies mandated by state law, such as the Centre City Development Corporation, the Charter sets up the method for appointing the City's representatives.

How Can I Get Involved?

Remember that the San Diego Charter cannot be changed without a vote of the people! This means there will always be public involvement. Your participation as San Diegans is critical. We welcome your involvement at every stage of this important process of Charter change.

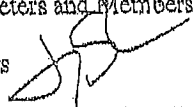
Email the Charter Review Committee: Charterreview@sandiego.gov

The S.D. Charter Review Committee is online at <http://www.sandiego.gov/charterreview>



OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO.

MEMORANDUM

DATE : January 22, 2007
To : Council President Peters and Members of the San Diego City Council
FROM : Mayor Jerry Sanders 
SUBJECT : Establishment of a Charter Review Committee

In the City's first year operating under Charter Article XV, Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform.

In cooperation with the City Attorney's office we have begun to work through some of these issues as they arise, but much more work must be focused on these issues in order to fully prepare for an effective long-term implementation of the Strong Mayor form of governance. I believe we can all agree that when roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority.

In addressing these issues, there are four subject areas or questions around which a work plan for the Committee will be set:

- What Charter modifications are necessary to implement the Kroll recommendations and other financial reforms?
- What is a clear definition of the roles and responsibilities of elected officials and the separation of powers under strong mayor?
- What measures may improve the functionality of strong mayor during this trial period?
- What legislative tightening would be required for effective permanent implementation of Article XV?

Each of these areas will be explored by a designated subcommittee and addressed concurrently in the Committee's work.

Committee meetings will be held twice monthly and will be noticed to the public in keeping with the Ralph M. Brown Act. Subcommittees working in each topic area are anticipated to meet once or twice monthly as is convenient for their membership and in keeping with their work load.

I will move immediately to empanel the Committee in preparation for them to begin their work on or around March 1st. It is my intention that the Committee complete its work and return its recommendations in readiness for the 2008 election cycle.

Valuing varied points of view, I would like to work with each of you to identify and nominate three individuals who may be appropriate to serve on the Committee from which I will select one from each of your submissions. In addition, I will make a number of appointments to round out the Committee ensuring a representative balance. We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry.

In addition to the Committee members, three ex-officio members will serve as support resources and advisers to the Committee; one each from the City Attorney, Mayor and the Independent Budget Analyst.

I look forward to working with you on these issues so critical to our City's future and welcome your support for this effort.

JS:ACH

CHARTER CITIES REMOVAL PROVISIONS

Jurisdiction & Structure	Charter Language	Summary
<p>San Jose Charter <i>Manager-Council structure</i> § 405 Judge of Qualifications</p>	<p>The Council shall be the judge of the election and qualification of its members, including the Mayor, and of any other elective officer, and of the grounds for forfeiture or loss of their respective offices, and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member, or the Mayor, or the holder of any other elective office, charged with conduct constituting grounds for forfeiture or loss of his or her office shall be given, if he or she so demands, an opportunity to be heard in his or her own defense at a public hearing after reasonable notice to such members.</p>	<p>City Council removal authority for all elective officers with due process provisions</p>
<p>Sacramento Charter <i>Manager-Council structure</i> § 63 Removal of City Manager</p>	<p>The city manager cannot be removed from office except by a vote of six members of the city council. The city manager shall not be subject to removal from office within twelve months of the date that the city manager first assumes the duties of office except for incompetence, malfeasance, misfeasance or neglect of duty. If the removal is proposed within the first twelve months, the city manager may demand written charges and a public hearing before the city council prior to the date upon which his removal becomes effective; but the</p>	<p>Due process provisions for removal of City Manager – no discussion of elective officers</p>

CHARTER CITIES REMOVAL PROVISIONS

	<p>decision of the city council shall be final, conclusive and binding upon the city manager, and pending such hearing the council may suspend the city manager from duty without loss of normal compensation.</p>	
<p>San Francisco Charter <i>Mayor-Supervisor structure</i> § 13.101.5(b) Vacancies</p>	<p>If the Office of Mayor becomes vacant because of death, resignation, recall, permanent disability or the inability to carry out the responsibilities of the office, the President of the Board of Supervisors shall become Acting Mayor and shall serve until a successor is appointed by the Board of Supervisors.</p>	<p>Board appointment of Mayoral successor for vacancy in office</p>
<p>§ 15.105 Suspension & Removal</p>	<p>(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and [other appointed board and commission positions omitted] is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall</p>	<p>Mayoral authority to suspend and remove for official misconduct as described with due process provisions</p>

CHARTER CITIES REMOVAL PROVISIONS

	<p>immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.</p> <p>...</p> <p>(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE. (1) Officers Enumerated in Subsections (a) and (b). (A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon: (i) a court's final conviction of that official of a felony crime involving moral turpitude; and</p>	<p>Mandatory removal for conviction of certain felonies. Mayor is considered appointing authority for purposes of removal of elected officials</p>
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CHARTER CITIES REMOVAL PROVISIONS

	<p>(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.</p> <p>(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.</p> <p>(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section. [provisions for appointee removal omitted]</p> <p>(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.</p> <p>(d) DISQUALIFICATION.</p> <p>(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.</p> <p>(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.</p>	<p>Failure to remove is itself official misconduct</p> <p>10-year disqualification for removal based upon felony convictions involving moral turpitude; 5-year disqualification for removal based upon official misconduct</p>
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CHARTER CITIES REMOVAL PROVISIONS

	<p>(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.</p> <p>(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.</p> <p>(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith</p>	<p>Procedural due process provisions with appeal to ethics commission with potential to overturn decisions based upon official misconduct (no similar provision for felony conviction)</p> <p>Official misconduct defined</p>
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CHARTER CITIES REMOVAL PROVISIONS

	and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.	
Los Angeles Charter <i>Mayor-Council structure</i> § 430 Subject of Recall	Any incumbent of an elected office, whether elected by vote of the people or appointed to fill a vacancy, may be removed from office by the registered voters of the City of Los Angeles, or the registered voters of the School District in the case of removal of a member of the Board of Education. The removal of the incumbent shall be known as the recall.	Removal by recall
Santa Barbara Charter <i>Mayor-Council structure</i> § 503 Vacancies	If the Mayor or other member of the City Council absents himself from all regular meetings of the City Council for a period of sixty (60) days consecutively from and after the last regular Council meeting attended by him, unless by permission of the City Council expressed in its official minutes, or if convicted of a crime involving moral turpitude, or ceases to be an elector of the City, his office shall become vacant. The City Council shall declare the existence of any such vacancy.	Provision for automatic vacancy in office for sufficient number of unexcused absences or conviction of crime involving moral turpitude (no misdemeanor/felony distinction)

CHARTER CITIES REMOVAL PROVISIONS

<p>Oakland Charter <i>Mayor-Council structure</i> § 304 Vacancy: What Constitutes</p>	<p>The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor.</p>	<p>Upon occurrence of various events, included extended absence or felony conviction, Council is required to declare the office vacant.</p>
<p>Fresno Charter <i>Mayor-Council structure</i> § 305 Vacancies</p>	<p>(a) An elective office becomes vacant when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, is convicted of a felony or of an offense involving a violation of his or her duties, ceases to be a resident of the City or the district corresponding in number to the office to which he or she was elected, neglects to qualify within the time prescribed by the provisions of this Charter, is absent from the State without leave for more than sixty consecutive days, or fails</p>	<p>Provides for "vacancy" to occur under various circumstances, including for conviction of a felony involving the official's duties.</p>

CHARTER CITIES REMOVAL PROVISIONS

	<p>the attend the meetings of the body of which he or she is a member for a like period without being excused therefrom by such body.</p> <p>(b) The Council shall declare the existence of any vacancy except vacancy caused by death or resignation. Such declaration shall be a final determination of the existence of the vacancy unless a court review is sought within thirty days after such declaration.</p>	
<p>New York Charter <i>Mayor-Council structure</i></p> <p>§ 9 Removal of Mayor</p>	<p>The mayor may be removed from office by the governor upon charges and after service upon him of a copy of the charges and an opportunity to be heard in his defense. Pending the preparation and disposition of charges, the governor may suspend the mayor for a period not exceeding thirty days.</p>	<p>Authority to remove mayor rests with governor with due process provisions</p>
<p>Seattle Charter <i>Mayor-Council structure</i></p> <p>Article V. Executive Department § 10 Removal of Mayor</p>	<p>The Mayor may be removed from office after a hearing, for any willful violation of duty, or for the commission of an offense involving moral turpitude, upon written notice from the City Council at least five days before the hearing. He or she shall have the right to be present, to the aid of counsel, to offer evidence and to be heard in his or her own behalf. Upon the affirmative</p>	<p>Mayoral removal by City Council for willful violation of duty, with due process provisions, 2/3 vote</p>

CHARTER CITIES REMOVAL PROVISIONS

<p>Article XIX. Officers; Terms and Vacancies § 5 Vacancies</p>	<p>vote of two-thirds of all the members of the City Council, acting as a court of impeachment, the office shall become vacant.</p> <p>An office becomes vacant on failure to qualify within the time limited by law; upon the death or removal from office or resignation of the incumbent, or his or her removal from or absence from the City for sixty days without leave of the City Council, or upon an adjudication of insanity; by a conviction of drunkenness, or by any permanent disability, preventing the proper discharge of duty.</p>	<p>Similar to Oakland, where office "becomes" vacant upon occurrence of specified events</p>
<p>§ 7 Suspensions and Removals</p>	<p>Any elective or appointive officer may be suspended and removed for cause by the Council, as hereinafter provided and the Council shall temporarily fill the vacancy, except as hereinafter provided.</p>	<p>Allows for elective officer to be removed by City Council "for cause" with due process provisions, without definition of "cause"</p>
<p>§ 8 Suspension of Elective & Appointive Officers</p>	<p>Whenever the Council shall suspend any officer it shall immediately notify the officer of such suspension and the cause thereof. The accused shall be furnished with a copy of the charges, and shall have the right to appear with counsel and make his or her defense. The City Council shall speedily try such officer on such charge, and for that purpose shall have power to adjourn from time to time until the trial shall be completed, to summon and compel the</p>	

CHARTER CITIES REMOVAL PROVISIONS

	<p>attendance of witnesses, to hear their testimony, to receive other evidence, and to hear the arguments of counsel.</p> <p>SUSPENSION OF COUNCIL MEMBERS; CHARGES; TRIAL; REMOVAL: In case of the suspension of a member of the City Council by that body, the member so suspended shall be tried in like manner as herein provided, except that the charges may be preferred by any elector or member of the City Council. In either case, the President of the City Council shall preside at such trial, and in his or her absence or disability the acting President. If two-thirds of all the members of the City Council shall by resolution find the accused guilty, then the suspended officer shall thereby be removed from office.</p>	
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THE CITY OF SAN DIEGO

MEMORANDUM

DATE: January 9, 2015
TO: Honorable Council President Sherri Lightner
FROM: Elizabeth Maland, City Clerk
SUBJECT: Request for Charter Review Priorities

Per your December 18, 2014, memo, my team and I have scoured the Charter for potential areas in need of review. I have attached a spreadsheet for your consideration that lists our initial assessment by Charter Section. We would need to work closely with the City Attorney's Office to determine which, of the items we have noted, ultimately require update, but the attached is meant as a constructive starting point.

Elizabeth Maland
Elizabeth Maland
City Clerk

Charter Section		Assessment
4	Districts Established	References 5.1. Notes that the ordinance adopted by Council may describe new boundaries by reference to a map on file in the office of the City Clerk; is this still the best way? Make sure new technology can be incorporated, and changes to legal requirements.
5	Redistricting	References 5.1. Establishes 9-month deadline; notes requirements to redistricting (contiguous, geographically compact, natural boundaries, street lines and/or boundary lines). Feedback from registrar of Voters regarding timing; make sure no legal changes to redistricting requirements.
5.1	Redistricting Commission	"Presiding Judge" (appointing authority) must be updated to reflect current limitations/practice. Establishes nomination period. Establishes deadline for creating Commission. Establishes seven (7) members. Commissioners serve until any legal issues are resolved. Establishes procedure for filling a vacancy. Sets date for first Commission meeting. Various other requirements that could possibly be in SDMC rather than Charter. Establishes budgeting procedure/timeline, which seems unwieldy.
6	Qualified Electors	No known issue for Office of the City Clerk.
7	Elective Officers Residency Requirement	Considers effect of redistricting; acknowledges minimum length of residency will be established by ordinance – this was a recent issue in an appointment process, but may be an issue that a review of the ordinance can address.
8	Election Code	No known issue for Office of the City Clerk. Provides for "adequate and complete procedure" to govern municipal elections.
9	Nominations	No known issue for Office of the City Clerk. Says to follow rules from 8.
10	Elections	Establishes regular elections on same date as State elections. Designates all other elections "special." Majority of votes = primary winner; otherwise, run-off for top two only. Clerk gives winner/appointee certificate immediately; s/he takes oath which is kept with Clerk. There have been discussions regarding types of voting – this limits to a top two run-off.

12	The Council	Four-year term of office begins at 10am on 12/10 (or next business day if 12/10 a weekend/holiday). Sets two-term limit. Partial term of 2+ years = full term. Sets fix-it if redistricting impacts representation. Sets how to fill a Council vacancy, by appointment or election, including timeframe. Defines vacancy as result of resignation, recall, death or unexcused absences. Sets date of vacancy in case of resignation. Sets rules for absence. Sets rules for outside employment, including any other office with the City except as allowed by general law or Charter.
14	Council Rules	No known issue for Office of the City Clerk. Sets Council as judge of "election and qualification" of CMs, subject to court approval. Council sets its own rules. May punish its members for disorderly behavior.
18	Ordinances & Resolutions	States that ordinances & resolutions "shall be recorded in a book kept for that purpose." Update this reference. Can "publication" be on-line?
23	Initiative, Referendum and Recall	Rights and powers reserved to the people. No referendum on ord which becomes effective immediately because of Charter. Establishes signature requirements for petitions. Could tie to California Election Code...
24	Mayor	No known issue for Office of the City Clerk. Sets four-year term and inauguration date. Mayor to be full-time.
26	Administrative Code	Provides Council the ability to rearrange city departments; should this be changed given that under Strong Mayor, the Mayor oversees day-to-day?
28	Duties of the Manager	Update with regard to Strong Mayor Form of Government?
31	Political Activities	Limits campaigning during work hours. Says employees must keep out anyone who is "making, collecting, receiving, or giving notice of any political assessment, subscription, or contribution." Any new case law or legal guidance?
38	City Clerk	Establishes Clerk's election by Council, term, and responsibility as record-keeper. Elected by Council – should Mayor participate in some way?

40	City Attorney	No known issue for Office of the City Clerk. Establishes term (including partial term), term limit, inauguration date, how to fill a vacancy. Note that it is different from other elected vacancy processes. References section 10.
41	Commissions	No known issue for Office of the City Clerk. Funds, Civil Service, Planning, Ethics. Mayor appoints subject to Council confirmation. Council can appoint after 45 days. Term limits. Removal of member. Various specifics about each commission.
41.1	Salary-Setting Commission	No known issue for Office of the City Clerk. Establishes makeup, purpose and funding.
42	Membership Selection	No known issue for Office of the City Clerk. Appointments made so membership reflects community.
43	Advisory Boards and Committees	No known issue for Office of the City Clerk. Allows board creation by ordinance, with appointments by Mayor subject to Council confirmation. Allows committee creation by Mayor, Council, Manager; to be temporary, with narrow purpose. Council can appoint after 45 days, and can remove members. Manager creates Citizens' Review Board.
66	Board of Education	Establishes election rules, inaug, filling a vacancy. Board redistricts itself. Should this be in the City's Charter?
113	Official Advertising	Establishes contracting rules for "Official City Newspaper." Does this allow flexibility should State law allow for electronic publishing?
114	Bureau of Information and Publicity	Council may establish this bureau under the control of the Manager, who may assign responsibilities to the Clerk. Is this still appropriate?
117	Unclassified and Classified Services	No known issue for Office of the City Clerk. In part, establishes City Clerk as unclassified.
143.1	Approval of Retirement System Benefit	Certain vote (electors/members) required on ordinances impacting benefits; inclusion of actuarial study summary in sample ballot required in some instances.
144	Board of Administration	For SDCERS. In part, establishes that some seats appointed by Mayor with Council confirmation.
211	Oath of Office	Requires officers and members of City Committees, Boards, Commissions to take oath/affirmation as provided by Constitution or State General Law before entering upon duties; filed with and kept by Clerk. Language – issues raised.

212	Continuance of Present Officers	No known issue for Office of the City Clerk. In part, establishes 12/10 as beginning of term of office for certain elected officials.
215	Publicity of Records	Records are generally open to public inspection. Necessary still with PRA requirements & Open Data.
216	Copies of Records	Charges for copies established by Council. Add – or by other law if appropriate?
216.1	Access to Government Information	Update with current law and/or open data, PRA, etc.
223	Amendment of Charter	Charter may be amended in accordance with provisions of State Constitution.
265	The Mayor	Requires certain termination appeals to be filed with Clerk for docketing. Establishes Mayor's authority to appoint board/commission members. Establishes term limits. Establishes procedure for filling a vacancy, including timeline and potential runoff. Council President takes on certain tasks during vacancy. Vacancy may result from death, resignation or recall. In case of resignation, determines date of vacancy. Review/update.
270	The Council	In part adds ninth Council district and member. Council can create Council committees, boards and citizen committees (references section 43). Integrate all Strong Mayor with other Mayor/Council sections of the Charter.
275	Introduction and Passage of Ordinances and Resolutions	In part establishes that ordinances calling or relating to elections may be passed by Council on the day of their introduction. Review.
280	Approval or Veto of Council Actions by Mayor	Not specific to ordinances calling or relating to elections. Sign & return – date of final passage clarification. Veto of election items clarification.
285	Enactment Over Veto	Clean-up now that there are nine Councilmembers.
295	When Resolutions and Ordinances Take Effect; Emergency Measures	In part establishes that ordinances calling or relating to elections take effect at the time indicated therein. In part establishes that ordinances adopted by vote of the electors take effect at the time indicated therein or the date the final canvass is issued by the ROV, whichever occurs later.

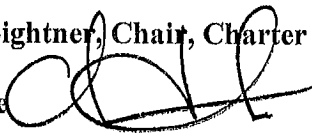


**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

M E M O R A N D U M

DATE: February 2, 2015

TO: Council President Sherri Lightner, Chair, Charter Review Committee

FROM: Councilmember Chris Cate 

SUBJECT: 2015 Charter Review Committee Priority Memo

I appreciate the opportunity to share my priorities for the Charter Review Committee for 2015. I believe the initial discussion of Charter Amendments should be focused on those items that have previously been reviewed and/or discussed in some context, to be placed on the June 2016 ballot. I believe any wholesale revisions to the Charter, including a rewrite, should not be done in a rushed manner. The consequences of this approach include not documenting those items to be later adopted via the municipal code, as well as prolonged implementation due to the City Council's deliberation process.

Review 2007 Charter Review Commission Report

On October 4, 2007, the San Diego Charter Review Commission issued its Final Report detailing 15 recommendations for amendments to the City's Charter. These recommendations came after the Commission held 51 public meetings and received testimony from representatives of 53 organizations, 72 individuals, and various public officials. The Commission also heard from experts on various Charter issues. Following receipt of the report, the City Council placed a number of measures on the June and November 2008 ballot that were ultimately approved by voters. The recommendations that were not placed on the ballot should be re-reviewed for potential action by the Committee. These recommendations pertain to the Fiscal Year and Manager's Estimate (Section 69), City Attorney (Section 40), Salary Setting Commission (Section 41.1), and the Mayor (Section 265).

Revise City Treasury Cash Management Obligation

Charter Section 80 states that monies allocated to a specific obligation must be in hand prior to the expenditure of those dollars. A resulting effect of this language is millions of dollars in capital project funds waiting to be spent as the City's infrastructure continues to deteriorate. The City Attorney's office should evaluate the legalities surrounding the ability to amend this language to allow these dollars to be spent on phases within a project, and also transfer these dollars to other priority projects, both inside and outside of their respective community planning area.

Establish Rainy Day Fund

Charter section 91 details the purpose and intent of the General Reserve Fund. Specifically, it states the fund, "may be expended only in the event of a public emergency when it shall be determined by the affirmative vote of at least two thirds of the members of the elected Council that such expenditures are necessary in order to insure the safety and lives and property of the City or its inhabitants."

Details regarding the General Fund reserve are outlined in Council Policy 100-20. The policy includes procedures for both the "Emergency Reserve" and the "Stability Reserve." While the Emergency Reserve covers the requirements as outlined in Charter section 91, the Committee should consider adding a section into the Charter that requires maintaining a Stability Reserve, or "Rainy Day Fund," and under what conditions monies will be allocated to such a fund.

Presenting of Information to City Council

Under the Strong Mayor form of governance, the Charter should clearly outline the relationship between the Mayor and City Council as it relates to the request and providing of information pertaining to the operations of the City. Charter sections 265 and 270 should be reviewed to determine appropriate language within one and/or both of the sections that clearly delineate this relationship.

Review Charter Section 265

Following the resignation of former Mayor Bob Filner, it would be prudent to review the operational circumstances as it pertains to an Interim Mayor. Charter Section 265(i) outlines his/her role, but the City has only experienced one instance of having an Interim Mayor during a Strong Mayor form of governance. The Committee should hear from Councilmember Todd Gloria regarding his experience and any potential opportunities for reform or to provide clarity for the position.

Amend Mt. Hope Cemetery Fund Obligations

Charter Section 55 outlines the governing provisions of the Mt. Hope Cemetery, stating 1) 20% of net proceeds from the sale of all cemetery lots be deposited into the Cemetery Perpetuity Fund (Fund); 2) the principal of the Fund may never be used for the maintenance and upkeep of the cemeteries; and 3) all income derived from the investment of Fund monies shall be expended for the maintenance or upkeep of the cemeteries. In addition, the Funds Commission is limited in its investment strategy of the fund. According to the Independent Budget Analyst, the City's General Fund subsidy of operations has totaled nearly \$2 million since Fiscal Year 2009. The Committee should discuss potential amendments that will allow the fund to potentially increase investment earnings to offset the need for a continuing General Fund subsidy.

Establish Permanent Charter Review Commission

The task of reviewing and updating the City's Charter requires constant attention. The Committee should review the potential of establishing a permanent Committee, comprised of elected councilmembers or appointed commissioners, to review any items that may not have been addressed by this Committee, as well as continue to seek input from the public.

Conduct Review of the City's Redistricting Commission

Section 5.1 of the Charter governs the operations and mechanics of the City's Redistricting Commission. Before the commencement of the next national decennial census, the Committee should conduct a thorough review of the Commission to ensure a fair, transparent, and effective redistricting process. The Committee should consider language that includes representation from each City Council district to sit on the Commission, as opposed to the current allotment of seven (7) members. In order to draw from a wide pool of qualified applicants, an extension of the nomination period from thirty (30) to sixty (60) days is warranted. In cooperation with the Mayor's office, a Redistricting fund should be established to annually allocate the necessary dollars to cover the expenses of the Commission.

Revise City Attorney Approval for Municipal Contracts

Each year, the City approves hundreds of contracts that vary in degree of scope and cost. Charter Section 40 requires the City Attorney to "endorse on each approval of the form or correctness thereof" for all municipal contracts. The Committee should work with the City Attorney's Office to draft language that allows for an effective contract approval process, especially as the City continues to identify streamlining measures for municipal contracts.

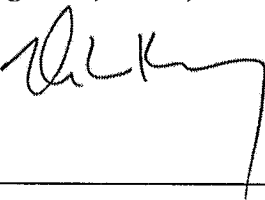
CC:ic

cc: Mayor Kevin L. Faulconer
Honorable Councilmembers



City of San Diego
MARK KERSEY
CITY COUNCILMAN, FIFTH DISTRICT

MEMORANDUM

DATE: February 5, 2015
TO: Council President Sherri Lightner, Chair, Charter Review Committee
FROM: Councilman Mark Kersey 
RE: Charter Review 2015

Thank you for the opportunity to submit recommendations for the Special Issues Committee on Charter Review, per your December 18, 2014 memorandum. I look forward to a comprehensive work plan with suggestions from the Council, City Attorney, Independent Budget Analyst, City Auditor, City Clerk, Department Directors, and members of the public.

As with the Open Data Policy we partnered to create last year, this Committee provides a chance to use technology to improve transparency and accountability in government and to facilitate public collaboration with City Hall. Thus, I respectfully request that the Committee create an online tool that allows all San Diegans to offer input on Charter revisions in an open, organized way.

To identify an appropriate program, my office engaged Open San Diego, a volunteer organization dedicated to “using technology to make government and civil society better and promote open government, open data, and civic participation.” They recommended the online publishing service *Medium*, and I concur that it is ideal for this project. *Medium* is easy to use, supports line-by-line comment on the text of the Charter, and there is no cost to either the City or public participants.

I look forward to maximizing the potential of the Charter review process through broad public input.

cc: Honorable City Council Members

Palmer, Jacqueline

From: LoMedico, Stacey
Sent: Monday, December 29, 2014 3:48 PM
To: Palmer, Jacqueline
Cc: Chadwick, Scott
Subject: RE: input req'd; potential updates to City Charter
Attachments: ARTICLE VII watermarked.docx; ARTICLE VIII watermarked.docx; ARTICLE V watermarked.docx

See attached suggestions

Charter Section: 55, 77A, Article VIII (including but not limited to Sections 115, 116, and 117)

Stacey LoMedico
Assistant Chief Operating Officer
City of San Diego
202 C Street, MS9A
San Diego, CA 92101
(619) 533-4548

From: Palmer, Jacqueline
Sent: Friday, December 19, 2014 3:17 PM
To: Department Directors Mayoral
Cc: Chadwick, Scott; Executive Secretaries Mayoral
Subject: input req'd; potential updates to City Charter

This message is sent on behalf of Scott Chadwick.

Please see the attached memorandum from Council President Lightner. In it, the Council President asks for potential updates or modifications to the City Charter from all Directors to be considered in the Special Issues Committee on Charter Review early next year.

Please submit your proposed updates or issues to Scott Chadwick via email (with Jacqueline Palmer on copy) by Monday, February 2.

If you have any questions, please contact our office.

Many thanks,

Jacqueline Palmer
Confidential Secretary to Scott Chadwick, Chief Operating Officer
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
(619) 236-6207
palmerj@sandiego.gov

Disclosure: This email is public information. Correspondence to and from this email address is recorded and may be viewed by third parties and the public upon request.

SAN DIEGO CITY CHARTER

authorized by Article XIII A of the California Constitution may be levied by the Council only if the proposed levy has been approved by a two thirds vote of the qualified electors of the City voting on the proposition; or if the special tax is to be levied upon less than the entire City, then the tax may be levied by the Council only if the proposed levy has been approved by a two thirds vote of the qualified electors voting on the proposition in the area of the City in which the tax is to be levied.

(Amendment voted 11-08-1983; effective 12-30-1983.)

SECTION 77: CAPITAL OUTLAY FUND

There is hereby created a fund in the City Treasury, to be known as the Capital Outlay Fund. Into this fund each year there shall be placed all moneys derived from taxation required or needed for capital outlay expenditures and all proceeds received from the sale of city owned real property.

The moneys in the Capital Outlay Fund shall be used exclusively for the acquisition, construction and completion of permanent public improvements, including public buildings and such ~~interior~~ furnishings, equipment, supplies, inventory and stock as will establish the public improvement as a going concern. This fund may also be used for the acquisition, construction and completion of real property, water and sewer mains and extensions, and other improvements of a permanent character and also the replacement or reconstruction of the same, but not the repair or maintenance thereof, and shall not be used for any other purpose or transferred from said fund, except with the consent of two thirds of the qualified electors of said City, voting at a general or special election.

No moneys in said fund shall be transferred at the end of a fiscal year, but shall remain

therein as trust moneys for the purposes above outlined, and the said fund shall be used and maintained, if possible, as a cash reserve to enable the City to meet public emergencies or acquire needed permanent public improvements without the issuance of bonds.

Each year the Council may appropriate from said fund in the Annual Appropriation Ordinances, except for use of the Harbor Department, sufficient moneys to care for the needs of the various departments of the City for capital outlay expenditures of a permanent character.

(Amendment voted 04-22-1941; effective 05-08-1941.)

(Amendment voted 04-20-1943; effective 05-04-1943.)

(Amendment voted 04-19-1949; effective 05-20-1949.)

(Amendment voted 11-06-1962; effective 01-21-1963.)

(Amendment voted 06-07-1966; effective 06-29-1966.)

SECTION 77A: PROVISIONS FOR ZOOLOGICAL EXHIBITS

The Council shall levy annually, in addition to all other taxes provided for in this Charter, not less than two cents (\$0.02) on each one hundred dollars (\$100.00) of the assessed valuation of the real and personal property within the City, to be used exclusively for the capital maintenance in Balboa Park of zoological exhibits. Approvals of projects and expenditures shall be in accordance with the procedures for projects within the City's capital improvement program.

~~Whenever the Council deems it to be for the best interests of the City, the Council may enter into a contract, upon such terms and conditions as the Council may prescribe, for the maintenance in Balboa Park of zoological exhibits, with any organization formed primarily for the purposes of maintaining zoological gardens and zoological exhibits and conducting general zoological work, and may make available to such organization the proceeds of the special~~

SAN DIEGO CITY CHARTER

~~tax levy provided for in this section.~~

(Addition voted 11-06-1934; effective 01-21-1935.)

(Amendment voted 04-22-1941; effective 05-08-1941.)

SECTION 77B: PUBLIC TRANSPORTATION

The Council may levy, in addition to all other taxes provided for in this Charter, a special tax in an amount not to exceed ten cents (\$0.10) on each one hundred dollars (\$100.00) of the assessed valuation of all real and personal property within the City, to be used for discharging any obligations undertaken by the City to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system.

The Council may establish special funds, execute contracts, acquire property by purchase, devise, lease, gift or condemnation and may sell, lease, convey, exchange, dispose of, or lend property or funds in order to provide, promote or preserve a public transportation system. The enumerated powers in this section are in aid of public transportation and shall not be limited by any other provisions of this Charter.

(Addition voted 06-07-1966; effective 06-29-1966.)

SECTION 78: ASSESSMENT AND COLLECTION OF TAXES

The Council shall by ordinance provide that the assessment and collection of taxes for The City of San Diego shall be performed by the County Assessor and County Tax Collector of the County of San Diego and make such arrangements to carry out the provisions of this ordinance. Provided, however, that if at any time the majority of the electors of The City of San Diego voting at an election for that purpose, decide to have the City assume the duty of assessing and collecting the taxes for municipal purposes,

then the Council may by ordinance provide for such assessment and collection of taxes by City officers and make the necessary arrangements to carry out the will of the people as expressed at such election.

SECTION 79: SPECIAL ASSESSMENTS

The Council shall have power by ordinance to provide for the payment of all or any part of the cost of any public service or of the acquisition of any land or other property for public use, or of the construction, reconstruction, operation or maintenance of any structure or work in the nature of a public facility or improvement, by levying and collecting special assessments upon property specially benefitted. The mode and manner for the acquisition of any land or other property for public use or of the construction, reconstruction, operation or maintenance of any structure or work in the nature of a public facility or improvement and the levying and collecting of special assessments therefor shall be as prescribed at that time by the general law of the State of California relative thereto; unless the Council shall by ordinance provide otherwise.

The legal and engineering work of preparing proceedings, plans and specifications, costs and estimates of any improvements under this Section shall be done and performed by the offices of the City Attorney and City Engineer respectively. However, if there shall be filed with the City Clerk for presentation to the Council a request in writing by property owners interested that such legal and engineering work be performed by attorneys and engineers outside of the City employ, the Council may so provide. As a condition precedent to the Council's granting permission for the employment of private attorneys or engineers, the property owners interested,

SAN DIEGO CITY CHARTER

ARTICLE VIII

CIVIL SERVICE

SECTION 115: CIVIL SERVICE COMMISSION

This Commission shall have supervision over the selection, promotion and removal of all employees of the City subject to the Civil Service provisions of this Charter.

*(Amendment voted 11-06-1956; effective 01-10-1957.)
(Amendment voted 11-04-1969; effective 01-29-1970.)*

SECTION 116: PERSONNEL DIRECTOR

The Civil Service Commission shall appoint a Personnel Director who shall serve as Secretary of the Commission. He shall act as Chief Examiner and superintend the examinations, subject to the direction of the Commission. He shall perform such other duties as are prescribed by this Charter, by ordinance, or by the Commission.

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:

- (1) All elective City Officers
- (2) Members of all boards and commissions
- (3) All department heads and one principal assistant or deputy in each department
- (4) One assistant to Mayor
- (5) City Manager, Assistant City Manager, and Assistants to the City Manager

(6) City Clerk

(7) Chief Financial Officer, Independent Budget Analyst, and City Auditor

(8) Purchasing Officer

(9) Treasurer

(10) Not more than six Assistant City Attorneys, all Deputy City Attorneys, and four other assistants in the Office of the City Attorney.

(11) All Assistants and deputies to the Independent Budget Analyst, and all Assistants and deputies to the City Auditor

(12) The Planning Director

(13) A Confidential Secretary to the Mayor, City Council, City Manager, Police Chief, City Attorney

(14) Officers and employees of San Diego Unified School District

(15) Persons employed in positions for expert professional temporary service when such positions are exempted from the Classified Service for a specified period of temporary service by order of the Civil Service Commission

(16) Interns including, but not limited to, Administrative Interns and legal Interns, temporarily employed in regularly established training programs as defined in the job specifications of the City

(17) Managerial employees having significant responsibilities for formulating or administering departmental policies and programs. Each such position shall be exempted from the Classified Service by ordinance, upon the initiation of the appropriate appointing authority and after

Comment [s1]: Changes throughout best upon best practices for other city's who have Civil Service.

Comment [s2]: Repeal -- now a Strong Mayor form of govt. The Personnel Director should be appointment and within the power of the Mayor

SAN DIEGO CITY CHARTER

receiving the advisory review and comment of the Civil Service Commission and the approval of the City Council.

(b) The Classified Service shall include all positions not specifically included by this section in the Unclassified Service; provided, however, that the incumbents in the positions of the Planning Director and the Principal Assistant to the Planning Director on January 1, 1963 shall remain in the Classified Service until the respective positions are vacated by the incumbents.

(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 core public safety services provided by police officers, firefighters, and lifeguards who participate in the City's Safety Retirement System shall not be subject to Managed Competition. 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.

(Amendment voted 03-13-1945; effective 04-09-1945.)
(Amendment voted 03-11-1947; effective 03-24-1947.)

Comment [s3]: Make changes to make it viable to achieve what was the voters intent in 2010

SAN DIEGO CITY CHARTER

be credited on the accounts of the City as a reimbursement credit for the monies paid by the City each year for the redemption of Water Bonds and the payment of interest thereon, costs of services and facilities furnished to the Water Utility by other City departments and funds, and an amount equal to the estimated loss in taxation which would be paid to the City by the Water Utility if it were not municipally owned, together with a reasonable profit on the City's investment in the water system.

The Council shall have power to employ special counsel for the purpose of advising and representing the City in all matters, proceedings and things relating to or concerning the development, impounding and distribution of water.

*(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 03-11-1947; effective 03-24-1947.)
(Amendment voted 09-17-1963; effective 02-11-1964.)*

SECTION 54: HARBOR DEPARTMENT

*(Amendment voted 03-23-1937; effective 04-14-1937.)
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 06-08-1954; effective 01-10-1955.)
(Amendment voted 06-07-1960; effective 01-09-1961.)
(Amendment voted 06-05-1962; effective 06-29-1962.)
(Repeal voted 09-17-1963; effective 02-11-1964.)*

SECTION 55: PARK AND RECREATION

The City Manager shall have the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of City-owned property, golf courses, playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City. The City Council shall by ordinance adopt regulations for the proper use and protection of said park property, cemeteries,

playgrounds and recreation facilities, and provide penalties for violations thereof. The Manager is charged with the enforcement of such regulations.

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two thirds of the qualified electors of the City voting at an election for such purpose. However, real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may be used for any public purpose deemed necessary by the Council.

Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation and cemetery purposes.

The City Manager shall also have charge of the management, control, preservation, regulation, improvement and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein. At least twenty percent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission

Comment [s1]: Not the expert but I believe there are changes that would be recommended by the City Treasurer as it pertains to the Funds Commission.

Palmer, Jacqueline

From: Lewis, Mary
Sent: Friday, January 30, 2015 8:32 PM
To: Palmer, Jacqueline
Subject: Fwd: Charter changes due Monday
Attachments: Charter Revisions Article V - Comptroller.docx; ATT00001.htm; Charter Revisions Article VII - Comptroller.docx; ATT00002.htm

Here are suggestions from the Comptrollers' office.

Sent from Mary's iPad

Begin forwarded message:

From: "Charvel, Rolando" <RCharvel@sandiego.gov>
Date: January 30, 2015 at 5:09:08 PM PST
To: "Lewis, Mary" <MLewis@sandiego.gov>
Cc: "Beam, Carol" <CBeam@sandiego.gov>
Subject: RE: Charter changes due Monday

We reviewed Sections V and VII mostly focusing on Comptroller functions. Most are cosmetic (i.e. name changes, etc). Let me know if you have any questions.

Thanks,

Rolando Charvel, City Comptroller
City of San Diego, Office of the Comptroller
202 C St, San Diego CA, 92101
Office (619)-236-6869 Fax (619)-533-3398
rcharvel@sandiego.gov

From: Lewis, Mary
Sent: Friday, January 30, 2015 11:11 AM
To: Charvel, Rolando; Granewich, Gail; Kommi, Lakshmi; McCraner, Tracy; Bych, Greg
Cc: Beam, Carol
Subject: Charter changes due Monday
Importance: High

The date for Scott to turn in our recommendations is Monday. As we discussed, please send your recommended changes to me asap so I can get those compiled for Scott.

Thanks

Mary Lewis
Chief Financial Officer
City of San Diego | 202 C Street - 9th Floor | San Diego, CA 92101
619. 236.5941 | Fax: 619. 236.6606 | mlewis@sandiego.gov

Proposed Changes to City Charter
Article V
Office of the City Comptroller
January 30, 2015

ARTICLE V

(Effective 01-01-2006, all executive authority, power, and responsibilities conferred upon the City Manager in this Article were transferred to the Mayor. See section 260.)

EXECUTIVE AND ADMINISTRATIVE SERVICE

Section 39: Chief Financial Officer.

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

(Amendment voted 06-04-1974; effective 08-13-1974.)

(Amendment voted 06-03-2008; effective 07-08-2008.) Prior

Language

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Comment [RC1]: To make it consistent with Article VII - Section 80

Proposed Changes to City Charter
Article VII
Office of the City Comptroller
January 30, 2015

ARTICLE VII

(Effective 01-01-2006, all executive authority, power, and responsibilities conferred upon the City Manager in this Article were transferred to the Mayor. See section 260.)

FINANCE

Section 70: Power to Fix Salaries

The Council shall have the power to fix salaries of the ~~City Manager~~Independent Budget Analyst, the City Clerk, ~~the City Treasurer~~, the City Auditor and ~~Comptroller~~, and all other officers under its jurisdiction. All members of Commissions shall serve without compensation except where otherwise provided by State law or this Charter. Except as otherwise provided by law, the City Manager and other departmental heads outside of the departments under control of the City Manager shall have power to recommend salaries and wages subject to the personnel classification determined by the Civil Service Commission, of all other officers and employees within the total amount contained in the Annual Appropriation Ordinance for personal service in each of the several departments of the City

Government. All increases and decreases of salary or wages of officers and employees shall be determined at the time of the preparation and adoption of the budget, and no such increase or decrease shall be effective prior to the fiscal year for which the budget is adopted; provided, however, that if during any fiscal year, the Council should find and determine that because of a significant change in living costs, the salaries and wages fixed for such fiscal year are not comparable to the level of other salaries and wages of other public or private employments for comparable services and as a result, the best interests of the City are not being protected or are in jeopardy, said Legislative Body, upon recommendation of the Manager or other department head, and if funds are available, may revise such salary and wage schedules to the extent necessary to protect the City's interests.

(Amendment voted 03-13-1951; effective 03-26-1951.)

(Amendment voted 11-08-1977; effective 01-20-1978.)

Prior Language

Section 72: Appropriation Accounts

Accounts shall be kept by the ~~Auditor and Comptroller~~Chief Financial Officer for each item of appropriation made by the Council. Each such account shall show in detail the appropriations made thereto, the amount drawn thereon, the transfers made thereto, the unpaid obligations charged against it, and the unencumbered balance to the credit thereof. Upon completion of a project for which specific ordinance appropriation is

Proposed Changes to City Charter
Article VII
Office of the City Comptroller
January 30, 2015

made, it shall be the duty of the Director of the Department concerned at once to so notify the Auditor and Comptroller ~~Chief Financial Officer~~ by letter of completion and clearance. The Auditor and Comptroller ~~Chief Financial Officer~~ shall thereupon transfer any unexpended balance to the ~~general fund~~ appropriate fund. If after one year from date of approval of such ordinance, the Auditor and Comptroller ~~Chief Financial Officer~~ has not received notice of completion or that the work is not progressing, he shall without further consideration restore the unexpended balance in the item so set up to the ~~general~~ appropriate fund.

(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)

Section 80: Money Required to Be in Treasury

No contract, agreement, or other obligation, involving the expenditure of money out of appropriations made by the Council in any one fiscal year shall be entered into, nor shall any order for such expenditure be valid unless the Auditor and ~~Chief Financial Officer~~ Comptroller shall first certify to the Council that the money required for such contract, agreement or obligation for such year is ~~or will be~~ in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. The certificate of the Auditor and ~~Chief Financial Officer~~ Comptroller shall be filed and made a matter of record in his office and the sum so certified as being in the treasury shall not thereafter be considered unencumbered until the City is discharged from the contract, agreement or obligation. All unencumbered moneys actually in the treasury to the credit of the appropriation from which a contract, agreement or obligation is to be paid and all moneys applicable to its payment which before the maturity thereof are anticipated to come into the treasury to the credit of such appropriation shall, for the purpose of such certificate, be deemed in the treasury to the credit of the appropriation from which the contract, agreement or obligation is to be paid.

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(Amendment voted 06-04-1968; effective 07-22-1968.)

(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)

Prior Language

Section 81: Allotments

The Manager shall be responsible for establishing internal budgetary allotments based on the allocations contained in the annual appropriation ordinance for each department of the City.

(Amendment voted 11-04-1969; effective 01-29-1970.)

Prior Language

Proposed Changes to City Charter
Article VII
Office of the City Comptroller
January 30, 2015

**Section 82: Examination and Investigation of Claims by the Auditor and Comptroller
Chief Financial Officer**

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The Auditor and Comptroller Chief Financial Officer shall examine all payrolls, bills, and other claims and demands, except claims for damages against the City, and shall issue no warrant or check-warrant for payment unless he or she finds that the claim is in proper form, correctly computed, and duly approved; that it is legally due and payable; that an appropriation has been made therefore which has not been exhausted; and that there is money in the treasury to make payment. He or she may investigate a claim and for that purpose may summon before him or her any officer, agent or employee of the City, any claimant or other person, and examine him upon oath or affirmation relative thereto, and if he or she finds a claim to be fraudulent, erroneous or otherwise invalid, he or she shall not issue a warrant or check-warrant therefore. If the Auditor and Comptroller Chief Financial Officer issues a warrant or check-warrant on the treasury authorizing payment of any claim in contravention of the provisions of this Section, he or her and his or her sureties shall be jointly and severally liable to the City for the amount of such warrant or check-warrant if paid. All payrolls, bills and other claims and demands under the provisions of this section may be paid by warrants or check-warrants, electronic funds transfer (ACH), or wire or other form of payment as authorized by the provisions of Section 53911 of the Government Code of the State of California. (Amendment voted 09-17-1963; effective 02-11-1964.) (Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

Section 83: Payment of Claims Against the City

No claim against the City shall be paid except by means of a check-warrant, electronic funds transfer (ACH), or wire or other form of payment authorized under the provisions of Section 53911 of the Government Code or a warrant on the treasury issued by the Auditor and Comptroller. The Auditor and Comptroller Chief Financial Officer shall issue no warrant or check-warrant for the payment of a claim unless the claim be evidenced by voucher approved approval by the head of the Department or office for which the indebtedness was incurred, and each such officer and his or her surety shall be liable to the City for all loss or damage sustained by reason of his or her negligence or corrupt approval of any claim. No demand shall be allowed, approved, audited, or paid unless it shall specify each item of the claim and the date thereof; provided, however, that warrants or check-warrants payments for salaries of officers and employees shall be allowed by the Auditor and Comptroller Chief Financial Officer and paid regularly from the treasury without the necessity of any demand therefore or approval thereof as in this section prescribed for other claims. (Amendment voted 06-05-1956; effective 01-10-1957.)

Proposed Changes to City Charter
Article VII
Office of the City Comptroller
January 30, 2015

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

Section 86: Disposition of Public Moneys

All City officials and employees empowered to collect money for fees, permits, licenses, inspections, services, taxes or other municipal charges, shall collect the same promptly at the time they become due, turn them into the City Treasury daily, obtain a receipt therefor, and report the same to the Chief Financial Officer weekly; provided, however, that in the case of employees located in distant parts of the city or county who in the course of their duties collect money belonging to the City, which collections can be deposited in the City Treasury daily only with difficulty and undue cost to the City, such collections may be deposited in the City Treasury within one week after their receipt by the employee collecting the same. All such moneys and all fines or pecuniary penalties or forfeitures which may accrue to the City, and all funds which may remain in the possession of the City unclaimed after a period of one year from the date when due and payable, shall be credited to the ~~general-appropriate~~ fund of the City, and shall be applicable to any purpose to which the Council may appropriate them and the Council shall appropriate from this fund whatever sum may be necessary to pay valid claims of more than one year's standing.

*(Amendment voted 04-22-1941; effective 05-08-1941.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language*

Section 87: Uniform Accounts and Reports

The Auditor and ~~Comptroller~~ Chief Financial Officer shall prescribe uniform forms of accounts which shall be observed by all officers and Departments of the City which receive or disburse City moneys. Whenever an act shall be passed by the legislature of the State providing for uniform municipal accounts or reports, the City Council may elect to conform thereto. *(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)*

**Section 89: Monthly Statements by the Auditor and-
~~Comptroller~~ Chief Financial Officer**

The Auditor and ~~Comptroller~~ Chief Financial Officer shall prepare for submission to the

Proposed Changes to City Charter
Article VII
Office of the City Comptroller
January 30, 2015

Council at least monthly, or when requested, 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 and Division thereof as of the last day of the previous accounting period.

(Amendment voted 06-04-1974; effective 08-13-1974.)

(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)

Prior Language

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Section 110: Claims Against the City

Whenever it is claimed that the City of San Diego is liable to any person because of injuries suffered by such person, either to person or property, because of negligence of the City or its officers, a verified claim for damages shall be presented in writing and filed with the designated City official of the City of San Diego within one hundred (100) days after the occurrence giving rise to the claim for damages.

Whenever it is claimed that the City of San Diego is obligated to pay money to any person because of contract or by virtue of operation of law, a demand or claim for such money shall be presented in writing and filed with the ~~Auditor and Comptroller~~Chief Financial Officer of the City of San Diego within one hundred (100) days after the last item of the account or claim has accrued.

Each claim for damages because of tort shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.

Each claim or demand for money due because of contract or operation of law shall specify the name and address of the claimant, a brief description of the contract or a brief recital of the facts giving rise to the obligation of the City imposed by law.

The time limit of one hundred (100) days shall not begin to run against a claimant whose claim or demand for money due is because of operation of law until such claimant shall have actual notice of the existence of such claim.

No suit shall be brought on any claim for money or damages against The City of San Diego until a demand for the same has been presented, as herein provided.

(Amendment voted 03-28-1939; effective 04-24-1939.)

(Amendment voted 04-19-1949; effective 05-20-1949.)

(Amendment voted 03-10-1953; effective 04-20-1953.)

(Amendment voted 04-21-1959; effective 05-20-1959.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

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(Amendment voted 11-08-1977; effective 01-20-1978.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

Section 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-Mayor~~ and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness.

(Amendment voted 06-03-2008; effective 07-08-2008.)
Prior Language

Section 112: Appraisal of City Assets

~~The Auditor and Comptroller~~ Chief Financial Officer shall show in his records the cost or value of all real estate, buildings, structures, furniture and fixtures, equipment and property of any kind owned by the City, and may require every officer or Commission to assist him in procuring the data required therefore. Proper depreciation shall be made of all property of any kind which is used by the City for utility purposes. ~~A proper balance sheet under classified heads shall be presented to the Manager for inclusion in the annual budget and shall be published in the annual report of the Auditor and Office of the City Comptroller. This balance sheet shall show all convertible and other assets and all liabilities of the City.~~

(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 11-04-1958; effective 02-19-1959.)
(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)
Prior Language

<u>Article</u>	<u>Title</u>	<u>Section</u>	<u>Remarks:</u>
Article III	<u>Legislative Power (Sections 11-23)</u>	23	'Initiative, Referendum and Recall' - Review of petition thresholds may be warranted.
Article VII	<u>Finance (Sections 68-114)</u>	71-89	Contains various references to Auditor & Comptroller - revisions to this terminology may be warranted to reflect permanence of Strong Mayor form of government, e.g., Mayor, Chief Financial Officer, City Comptroller.
		75 & 76	'Annual Tax Levy' and 'Limit of Tax Levy' - provides for ad valorem property tax levy with limit of \$1.34 / \$100 and 25% AV limit for debt. Does this comport with Proposition 13 and other provisions of the California Constitution? In addition, the 25% AV limit for debt may be excessive and may warrant re-evaluation.
		77	'Capital Outlay Fund' - Use of the fund for repair and maintenance costs is prohibited. Review of this provision may be warranted. Seems gives important flexibility to expand uses for asset maintenance. Or, entirely remove Capital Outlay Fund -- if assets are sold, proceeds would go to respective funds.
		90.1	'Waterworks' - requires election among "qualified voters" for water revenue bonds. Comport with State law? And, City does Water bonds using State Special Fund Exception. Seems the Section is defunct.
		90.2	'Sewer' - requires election among "qualified voters" for sewer revenue bonds. Comport with State law? Same as above.
		90.3	'Voter Approval for Major Public Projects Conferring Significant Private Benefit' - Effect of this voter approval provision on Public/Private Partnerships should be assessed. Will have a dampening effect on P3 possibilities for core Infrastructure if voter approval is a strict requirement under charter unless modernized. II. 90.3 (b) (1), the term, "major public project" definition to be reviewed. The exception, "other public Infrastructure" means what?
		99	'Continuing Contracts' - Contracts of more than 5 years require 2/3 City Council approval by ordinance after a public hearing. To enhance efficiencies, should the requirement be reduced to approval by resolution with 2/3 Council approval, thus eliminating the requirement for two readings?
		99.1	'Sports Stadium' - This provision is specific to a Mission Valley site, i.e., Qualcomm Stadium. Elimination of this provision appears to be warranted as it is obsolete.
		103.1a	'Environmental Growth Fund' - funded by 25% of gas & electric franchise fees. Is continuation of this provision and/or the 25% funding level still desirable?
		114	'Bureau of Information and Publicity' - this provision appears to be obsolete.
Article VIII	<u>Civil Service (Sections 115-139)</u>	129.1	'Removal of Striking Employees' - This provision appears to be obsolete as it is in conflict with current laws.
Article XIV	<u>Miscellaneous Provisions (Sections 211-226)</u>	219	'Pueblo Lands' - sale of any of the Pueblo Lands requires voter approval. Is retention of this provision still desirable?
		221	'Sale of Real Property' - sale of 80 or more acres requires voter approval. Is retention of this provision still desirable?

Palmer, Jacqueline

From: Mainar, Javier
Sent: Monday, December 29, 2014 11:17 AM
To: Palmer, Jacqueline
Subject: RE: Watermarked Charter Sections
Attachments: ARTICLE IX Fire-Rescue Suggested Edits.docx; ARTICLE X Fire-Rescue Suggested Edits.docx

Jacqueline,

Here are my suggested edits to the Charter. Article IX edits are intended to improve firefighter and lifeguard retirement benefits to a level closer to that offered by all major cities in CA.

*Javier Mainar
Fire Chief
San Diego Fire-Rescue Department
Office: (619) 533-4301
Fax: (619) 533-4377
Email: jmainar@sandiego.gov*

From: Palmer, Jacqueline
Sent: Tuesday, December 23, 2014 4:46 PM
To: Department Directors Mayoral
Subject: FW: Watermarked Charter Sections

All,

To assist you in providing suggestions to the Council President on the City Charter, here are files containing sections of the Charter in Word, courtesy of the City Clerk.

They are watermarked "Not An Official Copy" and **are not to be distributed to anyone outside of this group.**

Please let me know if you have any questions or problems with the attachments.

Many thanks,

Jacqueline Palmer
Confidential Secretary to Scott Chadwick, Chief Operating Officer
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
(619) 236-6207
palmerj@sandiego.gov

Disclosure: This email is public information. Correspondence to and from this email address is recorded and may be viewed by third parties and the public upon request.

SAN DIEGO CITY CHARTER

ARTICLE IX

(Effective 01-01-2006, all executive authority, power, and responsibilities conferred upon the City Manager in this Article were transferred to the Mayor. See section 260.)

THE RETIREMENT OF EMPLOYEES

SECTION 140: ESTABLISHMENT OF SEPARATE RETIREMENT PENSION SYSTEMS; DEFINITIONS

As of the election at which this Section becomes operative, the electorate of the City of San Diego has found and declared that the fiscal best interests of the City are served by reforming the retirement system authorized by this Charter to be established for City employees.

"Defined Benefit Pension Plan" or "Defined Benefit Pension System" is a system or plan to provide a specified allowance to a city retiree or a retiree's spouse after retirement that is based on a set formula based on factors such as age, years of service, and elements of compensation as established in this Article.

The Defined Benefit Pension Plan in place prior to said election, established by the City Council pursuant to Sections 141 through 149 of this Charter, may remain in place until, for any reason, there remain no participants in the Defined Benefit Plan. The City Council may by ordinance utilize any lawful means for terminating the Defined Benefit Plan. Any closure of the Defined Benefit Plan shall be designed and implemented to protect the employees' vested rights in the Defined Benefit Plan, generate cost savings for taxpayers, and ensure compliance with applicable laws and regulations, including tax regulations.

At such time as there remain no participants in the Defined Benefit Pension Plan, the

City shall take such actions as are necessary and appropriate to promptly wind down and terminate the Defined Benefit Pension Plan.

Notwithstanding the foregoing, and except as expressly provided in this Article IX, all Officers and employees, with the exceptions of sworn police officers, firefighters, and lifeguards, who are initially hired or assume office on or after the effective date of this Section shall participate only in such Defined Contribution Plans as authorized by Sections 150 and 151 of this Charter.

The provisions of Sections 141 through 149 shall apply only to the Defined Benefit Plan, and those City employees eligible to participate in the Defined Benefit Plan. The provisions of Sections 150 and 151 shall apply only to the Defined Contribution Plan, and those City employees eligible to participate in the Defined Contribution Plan, except as expressly stated.

Notwithstanding the foregoing, and except as provided in this Article IX, the City Council is hereby authorized and empowered by ordinance to enroll sworn police officers, firefighters and lifeguards hired after the effective date of this section in either the Defined Benefit Plan or the Defined Contribution Plan. This section shall be implemented in a manner consistent with the requirements of applicable labor relations laws.

(Addition voted 06-05-2012; effective 07-20-2012.)

SECTION 141: CITY EMPLOYEES' RETIREMENT SYSTEM

The Council of the City is hereby authorized and empowered by ordinance to establish a retirement system and to provide for death benefits for compensated public officers and employees, other than those police officers and firemen-firefighters who

SAN DIEGO CITY CHARTER

were members of a pension system on June 30, 1946. No employee shall be retired before reaching the age of sixty two years and before completing ten years of service for which payment has been made, except such employees may be given the option to retire at the age of fifty five years after twenty years of service for which payment has been made with a proportionately reduced allowance. Policemen officers, firemen-firefighters and full time lifeguards, however, who have had ten years of service for which payment has been made may be retired at the age of fifty five years, except such policemen officers, firemen-firefighters and full time lifeguards may be given the option to retire at the age of fifty years after twenty years of service for which payment has been made with a proportionately reduced allowance.

The Council may also in said ordinance provide:

(a) For the retirement with benefits of an employee who has become physically or mentally disabled by reason of bodily injuries received in or by reason of sickness caused by the discharge of duty or as a result thereof to such an extent as to render necessary retirement from active service.

(b) Death benefits for dependents of employees who are killed in the line of duty or who die as a result of injuries suffered in the performance of duty.

(c) Retirement with benefits of an employee who, after ten years of service for which payment has been made, has become disabled to the extent of not being capable of performing assigned duties, or who is separated from City service without fault or delinquency.

(d) For health insurance benefits for

retired employees.

(Editor's note; Supplement No. 655)

(Amendment voted 03-13-1945; effective 04-09-1945.)

(Amendment voted 04-19-1949; effective 05-20-1949.)

(Amendment voted 03-13-1951; effective 03-26-1951.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Amendment voted 11-06-1990; effective 02-19-1991.)

(Amendment voted 11-08-1994; effective 01-30-1995.)

(Amendment voted 11-05-1996; effective 02-10-1997.)

SECTION 141.1: REFORM OF SWORN POLICE OFFICER, FIREFIGHTER and LIFEGUARD DEFINED-BENEFIT PENSION PLAN

Notwithstanding any other provision of this Charter, or any ordinance or other action taken pursuant hereto, the maximum amount of retirement benefit payable to a sworn police officer, firefighter or lifeguard who is hired after the effective date of this section and who is a participant under the Defined Benefit Pension Plan, shall be an amount equivalent to 80% at age 55 of the average of the participant's highest consecutive 36 months of Base Compensation as defined by Section 70.1. The maximum set by this provision shall decrease by 3% (three percentage points) for each year that such participant retires before age 55.

(Addition voted 06-05-2012; effective 07-20-2012.)

SECTION 141.2: FULL AND FAIR EMPLOYEE CONTRIBUTIONS FOR THE DEFINED BENEFIT PENSION PLAN

For officers and employees who have the legal right to remain in the established Defined Benefit Pension Plan, the City shall contribute annually an amount substantially equal to that required of the employee for a normal retirement allowance, as certified by the Actuary established in Charter Section 142, but shall not contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement

SAN DIEGO CITY CHARTER

ARTICLE ~~X~~

TRANSFER OF POLICE AND FIRE DEPARTMENT EMPLOYEES INTO THE RETIREMENT SYSTEM

Notwithstanding any language in Article IX of this Charter to the contrary the City Council shall, upon the taking effect of this amendment, by ordinance provide for the transfer into the City Employees' Retirement System of all members of the Police and Fire Departments of the City of San Diego who were regularly employed and members of their respective Pension systems on June 30, 1946; provided, however, that in any such ordinance said Council shall provide as follows:

(1) A minimum retirement allowance of \$200.00 per month when a member has completed the required number of years of service as provided in this Charter, and who at the effective date of the ordinance is receiving a monthly salary of at least \$400.00;

(2) For retirement of members of the Police Department who entered the service of the department on or prior to the 8th day of May, 1941, and who have served for 20 years or more in the aggregate as a member or employee in any rank or capacity in said department, regardless of age, and for the retirement of members of the Police Department who entered the service of the department subsequent to the 8th day of May, 1941, after completion of 25 years of service in the aggregate;

(3) For retirement of members of the Fire Department who entered the service of the Department on or prior to January 1, 1936, and who have served for 20 years or more in the aggregate as a member or employee in any rank or capacity in said department, regardless of age, and for the retirement of

members of the Fire Department who entered the service of the department subsequent to the 1st day of January, 1936, after completion of 25 years of service in the aggregate;

Comment [JM1]: It seems this language is no longer relevant unless needed to support already retired members still receiving benefits.

(4) Each member of either the Fire or Police Department who is entitled to retire after 20 years of aggregate service with the City shall receive a pension credit of 2 1/2% of his final compensation for each year completed at the effective date of said ordinance, but in no case shall such credit exceed 50 % of such final compensation. For each year completed after the effective date of said ordinance the member shall be credited with 1/60th of his final compensation. The pension credits specified above will not be allowable until after such member shall have reached the age of 50 years. No member of either department who is entitled to retire after 20 years as above and who has had 20 years of service in the aggregate shall receive less than the following: \$200.00 per month as retirement allowance, together with such additional amount per month as will represent the actuarial equivalent of that portion of the contributions of such member contributed after his 20th year of service but before his attainment of age 50;

(5) Members of the Fire and Police Departments who are not eligible for retirement until the completion of 25 years of service in the aggregate shall receive a pension credit of 2 % of their final compensation for each year completed at the effective date of said ordinance, provided that such credit shall not exceed 50 % of such final compensation, and in addition thereto shall be entitled to credits of 1/60th of their final compensation for each year completed after the effective date of the ordinance. The pension credits specified in this paragraph will not be allowable until

SAN DIEGO CITY CHARTER

after such member shall have reached the age of 55 and has completed 20 years of aggregate service in the department; provided, however, that such member may be permitted to retire at the age of 50 years after 20 years of aggregate service in the department with a reduced allowance, as provided in Article IX and the ordinance passed pursuant thereto. Except as to those members who are forced to retire because of disability or who die, 'Final Compensation' within the meaning of paragraphs 4 and 5 hereof shall be the highest average compensation received during any five consecutive years of service, limited, however, to the following monthly maximums for members who retire: During the first year after the ordinance is adopted, \$400.00; during the second year, \$500.00; during the third year, \$600.00; during the fourth year, \$700.00; during the fifth year, \$800.00; and after the end of the fifth year there shall be no ceiling considered in determining the amount of the final compensation. As to those members who are compelled to retire because of disability or who die after the ordinance becomes effective 'Final Compensation' shall be defined as above, but with the following monthly maximums: For disability occurring during the first year after the ordinance is adopted, \$500.00; during the second year, \$600.00; during the third year, \$700.00; during the fourth year, \$800.00; during the fifth year, \$900.00; and after the end of the fifth year no ceiling shall be considered in determining the amount of the final compensation.

(6) No member of either the Fire or Police Departments transferred pursuant to the provisions of this Article of the Charter shall be required to contribute in excess of 8% of his total salary; and each member so transferred shall be classed as a safety member of a special class and shall be

entitled to all of the service credit earned by such member in the Police and Fire Retirement System up to the date of transfer without further contributions from said member because of absences prior thereto while serving in the armed forces of the United States.

Immediately upon the taking effect of the ordinance making the transfer of members into the City Employees' Retirement System, all of the provisions of Article IX not inconsistent with the hereinabove provided, together with any ordinance passed pursuant thereto, shall be applicable to such transferred members, and the Police and Fire Retirement System heretofore created in 1947 is abolished, and except as prescribed by this amendment all benefits therein authorized are canceled.

All moneys in the Police and Fire Retirement Fund at the date of the taking effect of the ordinance transferring said members are hereby transferred to the City Employees' Retirement Fund.

Nothing herein contained shall be construed in any way so as to affect the vested rights of members of the Police and Fire Departments who have been heretofore retired by virtue of any retirement or pension system of The City of San Diego.

(Amendment voted 04-19-1955; effective 05-05-1955.)

Note: Sections 149-192, relative to Police Relief and Pension Fund and Fire Relief and Pension Fund, were amended at various times, combined in 1947, and replaced in 1955 by new Article X.

(Amendment voted 11-02-2004; effective 04-01-2005.)

DRAFT

Human Resources

Charter Changes 2015 - Human Resources Department				
Article	Section	Title	Page #	Change/Suggestion
VII	82	Examination and Investigation of Claims by Auditor and Comptroller	11 and 12	Does the change in this section need to be from Auditor and Comptroller to CFO? Do we want to ensure verbs are singular?
VII	104	Term and Plan of Purchase	54	Does the City still have the types of franchises referenced by this section that would require this section to remain?
VII	107	Official Bonds	54	Does the City still require "officers" to provide surety bonds or is this an obsolete practice?
VII	111	Audit of Accounts of Officers	55	Is an audit of all accounts and books of all the Departments in the City conducted each year?
VII	112	Appraisal of City Assets	55	Should Real Estate Assets Department be incorporated in this section since they have an Asset Manager position?
VII	114	Bureau of Information and Publicity	56	Does the City still have a bureau of information and publicity?
VIII	115	Civil Service Commission	57	Is clarification needed to clarify the CSC is responsible for classified represented employees only?
VIII	117	Unclassified and Classified	57 - 58	Does section (b) need to be clarified that Classified Service only covers represented and unrepresented classified employees? Does clarification need to be incorporated as a result of CAO opinion (LO-2009-2) that the Mayor is not required to have Departments submit proposals for managed competition, but may request that they do so?
VIII	120	Limitations and Credits	58-59	Do the tests now have more strict requirements?
VIII	121	Eligibility Lists	59	Should the name of "Register of Eligibles" be revised to the commonly used terminology?
VIII	125	Service Register	59	Is this still maintained by the Personnel Director for the Classified Service and by the City Clerk for elected officers?
VIII	127	Standards of Efficiency	60	Is this the responsibility of the Personnel Director given Strong Mayor?
VIII	134	Political Influence Prohibits	62	Does this need clarification if this applies to all City employees, not just to officers/political officials.
IX	141	City Employees' Retirement System	65-66	Is an update needed to reflect new decision from SDCERS regarding COLA for spouses who receive benefit from spouse who died in the line of duty?
Overall Recommendations (1) Are all sections reviewed for conflicts with current local, state and Federal laws? (2) Are all sections still legally necessary? Can some be repealed? (3) Are all sections going to be referenced to make them gender neutral (i.e. his/her/councilmanic)? (4) Are we considering changing all references to City Manager throughout and change to Mayor per Strong Mayor?				

Palmer, Jacqueline

From: Valencia, John
Sent: Monday, February 02, 2015 4:40 AM
To: Chadwick, Scott
Cc: Palmer, Jacqueline
Subject: RE: Watermarked Charter Sections

Scott,

I reviewed the documents and found no conflicts with national/state guidance and principles regarding emergency preparedness and homeland security.

I do have one potential edit to Article XIV, Section 211, Oath of Office; add "employee" so it reads as follows (edit in red):

Every **employee**, officer, or member of a Committee, Board or of a Commission of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State to be filed and kept in the office of the City Clerk.

Similar "employee or officer" verbiage is used throughout Article VIII on the Civil Service. I did not see that the employee oath of office requirement was stated somewhere else in the Charter.

John

John Valencia
Executive Director
City of San Diego
Office of Homeland Security
619-533-6763

From: Palmer, Jacqueline
Sent: Friday, January 30, 2015 7:24 PM
To: Department Directors Mayoral
Subject: FW: Watermarked Charter Sections

All,

This is a reminder to submit any suggestions for the Council President on the City Charter by COB Monday. Please send your suggestions via email to Scott Chadwick, with me on copy. If you and your department do not have any suggestions at this time, please send us an email indicating so.

Many thanks,

Jacqueline Palmer
X66207

From: Palmer, Jacqueline
Sent: Tuesday, December 23, 2014 4:46 PM
To: Department Directors Mayoral
Subject: FW: Watermarked Charter Sections

Scott,

Here are my suggestions for the Charter Review Committee, pursuant to CP Lightner's memo and your request (please note that #2, #18, and #25 are the most important to my current day-to-day while the other suggestions are meant to be helpful if you need ideas)

1. Reference to City Manager should say Mayor/COO (depending on context)
2. References to outdated methods of communication and records storage should be updated to reflect the 21st century, updated technology, and reduction in paper use (i.e. allow for electronic records, electronic transmittal, and reporting). One way would be to comb through all the language and replace/update where needed (Section 18 is one example). Another option would be to add a short article that indicates that "any use of the term record, map, document, in writing includes electronic methods of storage, communication, and recording." The City Attorney may have a better sense of the language to use, but that's an overall theme that needs to be applied throughout the Charter to reflect our move towards a more environmentally friendly system.
3. Delete references to the new district 9 formation since it is now part of our SOP.
4. Some references in the Charter refer to "within X days of the adoption of this amendment" or "Charter" – those are unnecessary in my judgment and should be removed. Section 8 of Elections Code is one example, but there are many.
5. Not really my ball of wax, but there seem to be a lot of reference to absences at Council – as a former Council staffer, I can't really say that many councilmembers frequently skip meetings...this certainly seems like one of those things that could be taken up in the permanent rules of council.
6. Lots of things could go into the muni code that fall under Article 5 (like all the various departments – it's odd that they are all in the Charter, making some of them more equal than others), but I'm not sure that's the scope of this effort. Some other elements of Article 5 that might be worthy of discussing in terms of including in a muni code rather than Charter include Fund Commission, Planning Commission (didn't realize the City Engineer is an ex officio member of that), but those are not my areas of expertise, so I'm not suggesting they must be removed. Mary or David would be better positioned to make recos there.
7. In Section 55, I would expand what Mission Bay Park and Regional Park funds can be used for to include maintenance, repair, and capital improvements in those geographical areas of the city.
8. Section 64 seems a bit "no duh" in terms of what is already our budgetary authority and practice, so other than political reasons, I don't see a practical need.
9. Article VI about the schools is a bizarre section...am curious how that plays out in real life in terms of being in our City Charter and how that compares to other city charters...
10. I would amend Section 69 re: budget printing to keep only the underlined portions of the following sentences: "The Council shall provide for printing a reasonable number of copies of the estimate thus prepared for examination or distribution to public review by 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."
11. Cleanup needed in all areas referring to "Auditor and Comptroller" – is that the independent City Auditor or the Comptroller? May be different depending on the circumstance.

Performance & Analytics

12. The reference to City Treasurer is frequent and seems unique vis a vi other dept heads.
13. Section 76.1 seems duplicative of the CA Constitution.
14. The prescription of Section 77 seems overkill
15. 77A should be amended to allow for the Zoo tax to be used on Balboa Park as well – I would add the following text to the end of the first sentence of the first paragraph “or other deferred maintenance or capital improvements within Balboa Park as appropriated annually by the Council.”
16. On section 78, I would leave only the first sentence and add “or the City of San Diego” to the end of that sentence. Not sure why the people would have to approve our collecting and being responsible for our own taxes instead of the County (whom we pay upwards of \$5 mill a year to do that for us). I’d love to explore the option of what it would cost for us to take that on ourselves.
17. Section 82 seems like it could be in muni code as it is a common role and responsibility of a comptroller.
18. Make Charter 94 subservient to Charter Section 117 c if a service is selected for managed competition that would otherwise subject it to section 94. There was quite a bit of dialogue (including by the Huron consulting group) about how section 94 requires low-bid contracts for repair work, while 117 c (ostensibly a best value proposition) can only include maintenance work, which could render several potential city services as ineligible for MC, which was not the will of the voters.
19. I think 94 also references surety bonds and there may be other areas of the Charter that make it more difficult for small businesses to have an opportunity to do business with the City – I would suggest exploring the Charter with an eye just on that to make sure we are able to have more flexibility in this area as I know our standard contract language has been blamed as being too risk averse thereby precluding some slbe’s from participating in city work.
20. 94.1, 94.2, 94.3, 94.4 – not a lawyer, but it’s odd that the Charter would have sections specifically saying what we are “not prohibited” from doing – seems like we could just add a section to the Charter similar to constitution that says “anything not expressly prohibited herein is allowed or may be regulated by the muni code).
21. Section 103.1 A is outdated – I do not believe we have any debt related to open space acquisition, so it currently just serves and environmental purpose – seems like this section could be streamlined to reflect current practice, plus allow for more flexibility.
22. Section 113 seems overly prescriptive though Natasha or Amelia may have a different opinion.
23. Section 114 seems outdated, but defer to Amelia.
24. List of position under 117 seems to be not all-inclusive (yet includes SDUSD people)...could be streamlined.
25. I may have some edits to 117 c that I’m looking for based on our practice of implementing MC before all is said and done on the Charter Review. However, I recognize it’s politically sensitive, so I may simply need to rely on CAO for interpretation, if/when I need to cross a bridge or two.
26. Section 224 can be deleted and gender neutral language inserted to replace all those references.

Palmer, Jacqueline

From: Beam, Carol
Sent: Monday, February 02, 2015 4:14 PM
To: Palmer, Jacqueline
Subject: FW: Input req'd: potential updates to City Charter
Attachments: Charter_ArticleVIIpgs46_47.pdf

Here is Greg's.

Carol

x 36381

From: Bych, Greg
Sent: Monday, February 02, 2015 3:47 PM
To: Beam, Carol
Cc: Montoya, Estella
Subject: FW: input req'd: potential updates to City Charter

Carol,
Here is one from RM:

- Modification of Article VII, Section 110, Claims Against the City to reflect the California Government Code requirements. We believe this Article conflicts with the California Government Code for claim filing deadlines, which the City Attorney advises we follow.

From: Palmer, Jacqueline
Sent: Friday, December 19, 2014 3:17 PM
To: Department Directors Mayoral
Cc: Chadwick, Scott; Executive Secretaries Mayoral
Subject: Input req'd: potential updates to City Charter

This message is sent on behalf of Scott Chadwick.

Please see the attached memorandum from Council President Lightner. In it, the Council President asks for potential updates or modifications to the City Charter from all Directors to be considered in the Special Issues Committee on Charter Review early next year.

Please submit your proposed updates or issues to Scott Chadwick via email (with Jacqueline Palmer on copy) by Monday, February 2.

If you have any questions, please contact our office.

Many thanks,

Jacqueline Palmer
Confidential Secretary to Scott Chadwick, Chief Operating Officer
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
(619) 236-6207

company authorized to do business in the State of California a blanket surety bond, which shall insure the faithful performance of the official duties of each officer named therein and fix the amount of each bond for each officer named therein. Each bond or the blanket bond if so purchased shall be approved by the Council and filed with the City Clerk. The premium of all such bonds shall be paid by the City.

(Amendment voted 04-21-1953; effective 05-29-1953.)

Prior Language

Section 108: Forfeiture of Office for Fraud

Every officer who shall willfully approve, allow, or pay any demand on the treasury not authorized by law, shall be liable to the City individually and on his official bond, for the amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever debarred and disqualified from holding any position in the service of the City.

Section 109: Accounts of Municipally Owned Utilities

(Amendment voted 04-22-1941; effective 05-08-1941.)

(Repeal voted 11-03-1964; effective 01-21-1965.)

Prior Language

Section 110: Claims Against the City

Whenever it is claimed that The City of San Diego is liable to any person because of injuries suffered by such person, either to person or property, because of negligence of the City or its officers, a verified claim for damages shall be presented in writing and filed with the designated City official of The City of San Diego within one hundred (100) days after the occurrence giving rise to the claim for damages.

Whenever it is claimed that The City of San Diego is obligated to pay money to any person because of contract or by virtue of operation of law, a demand or claim for such money shall be presented in writing and filed with the Auditor and Comptroller of The City of San Diego within one hundred (100) days after the last item of the account or claim has accrued.

Each claim for damages because of tort shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.

Each claim or demand for money due because of contract or operation of law shall specify the name and address of the claimant, a brief description of the contract or a brief recital of the facts giving rise to the obligation of the City imposed by law.

The time limit of one hundred (100) days shall not begin to run against a claimant whose claim or demand for money due is because of operation of law until such claimant shall have actual notice of the existence of such claim.

No suit shall be brought on any claim for money or damages against The City of San Diego until a demand for the same has been presented, as herein provided.

(Amendment voted 03-28-1939; effective 04-24-1939.)

(Amendment voted 04-19-1949; effective 05-20-1949.)

(Amendment voted 03-10-1953; effective 04-20-1953.)

(Amendment voted 04-21-1959; effective 05-20-1959.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-08-1977; effective 01-20-1978.)

(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)

Prior Language

Section 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.

(Amendment voted 06-03-2008; effective 07-08-2008.)

Prior Language

Section 112: Appraisal of City Assets

The Auditor and Comptroller shall show in his records the cost or value of all real estate, buildings, structures, furniture and fixtures, equipment and property of any kind owned by the City, and may require every officer or Commission to assist him in procuring the data required therefor. Proper depreciation shall be made of all property of any kind which is used by the City for utility purposes. A proper balance sheet under classified heads shall be presented to the Manager for inclusion in the annual budget and shall be



Mark A. Hovey
Chief Executive Officer

January 30, 2015

VIA U.S. MAIL

Scott Chadwick, Chief Operating Officer
City of San Diego
Office of the Chief Operating Officer
202 C Street, 9th Floor
San Diego, CA 92101

Subject: Charter Revisions

Dear Scott,

In her Memorandum dated December 18, 2014, Council President Lightner requested that Department Directors submit potential updates and modifications to the City Charter for consideration by the Charter Review Committee.

Enclosed are SDCERS' proposed updates and modifications to Article IX of the City Charter. SDCERS believes the majority of proposed modifications are required to achieve consistency with the Board's fiduciary duties as well as consistency between provisions in other Articles of the Charter. SDCERS is also proposing that the City amend the Charter to allow Police Recruits to join SDCERS upon entering the Police Academy. Not only does SDCERS believe that this was the actual intent of the proposers of Proposition B, but that it will also assist the City in its retention of new police officers.

SDCERS would like to meet with you to discuss the proposed revisions and would be happy to appear before the Charter Review Committee if requested. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark A. Hovey", is written over a light-colored background.

Mark A. Hovey
Chief Executive Officer

MAH/jsm

Enclosure: SDCERS' Proposed Revisions to the City Charter

Page 2
Mr. Scott Chadwick
January 30, 2015

cc: Hon. Council President Sherri S. Lightner
Hon. Mayor Kevin Faulconer
Hon. Jan Goldsmith, City Attorney
Paul Cooper, Asst. City Attorney
Sharon Spivak, Deputy City Attorney
Roxanne Story Parks, Deputy City Attorney



2015 CITY CHARTER REVIEW
SDCERS' PROPOSED REVISIONS TO THE CITY CHARTER
CITY CHARTER ARTICLE IX

Section 140: Establishment of Separate Retirement Pension Systems; Definitions

As of the election at which this Section becomes operative, the electorate of the City of San Diego has found and declared that the fiscal best interests of the City are served by reforming the retirement system authorized by this Charter to be established for City employees.

"Defined Benefit Pension Plan" or "Defined Benefit Pension System" is a system or plan to provide a specified allowance to a city retiree or a retiree's spouse after retirement that is based on a set formula based on factors such as age, years of service, and elements of compensation as established in this Article.

The Defined Benefit Pension Plan in place prior to said election, established by the City Council pursuant to Sections 141 through 149 of this Charter, may remain in place until, for any reason, there remain no participants in the Defined Benefit Plan. The City Council may by ordinance utilize any lawful means for terminating the Defined Benefit Plan. Any closure of the Defined Benefit Plan shall be designed and implemented to protect the employees' vested rights in the Defined Benefit Plan, generate cost savings for taxpayers, and ensure compliance with applicable laws and regulations, including tax regulations.

At such time as there remain no participants in the Defined Benefit Pension Plan, the City shall take such actions as are necessary and appropriate to promptly wind down and terminate the Defined Benefit Pension Plan.

Notwithstanding the foregoing, and except as expressly provided in this Article IX, all Officers and employees, with the exception of sworn police officers and police recruits participating in the City's Police Academy, who are initially hired or assume office on or after the effective date of this Section shall participate only in such Defined Contribution Plans as authorized by Sections 150 and 151 of this Charter.

The provisions of Sections 141 through 149 shall apply only to the Defined Benefit Plan, and those City employees eligible to participate in the Defined Benefit Plan. The provisions of Sections 150 and 151 shall apply only to the Defined Contribution Plan, and those City employees eligible to participate in the Defined Contribution Plan, except as expressly stated. Notwithstanding the foregoing, and except as provided in this Article IX, the City Council is hereby authorized and empowered by ordinance to enroll sworn police officers hired after the effective date of this section in either the Defined Benefit Plan or the Defined Contribution Plan. This section shall be implemented in a manner consistent with the requirements of applicable labor relations laws.

(Addition voted 06-05-2012; effective 07-20-2012.)

+Section 141: City Employees' Retirement System

The Council of the City is hereby authorized and empowered by ordinance to establish a retirement system and to provide for death benefits for compensated public officers and employees, other than those policemen and firemen who were members of a pension system on June 30, 1946. No employee shall be retired before reaching the age of sixty-two years and before completing ten years of service for which payment has been made, except such employees may be given the option to retire at the age of fifty-five years after twenty years of service for which payment has been made with a proportionately reduced allowance. Policemen, firemen and full time lifeguards, however, who have had ten years of service for which payment has been made may be retired at the age of fifty-five years, except such policemen, firemen and full time lifeguards may be given the option to retire at the age of fifty years after twenty years of service for which payment has been made with a proportionately reduced allowance.

The Council may also in said ordinance provide:

- (a) For the retirement with benefits of an employee who has become physically or mentally disabled by reason of bodily injuries received in, or by reason of sickness caused by the discharge of duty or as a result thereof to such an extent as to render necessary retirement from active service.
- (b) Death benefits for dependents of employees who are killed in the line of duty or who die as a result of injuries suffered in the performance of duty.
- (c) Retirement with benefits of an employee who, after ten years of service for which payment has been made, has become disabled to the extent of not being capable of performing assigned duties, or who is separated from City service without fault or delinquency.
- (d) For health insurance benefits for retired employees.

Notwithstanding anything to the contrary in this section, the Charter or the Municipal Code, reciprocal service granted under the Uniform Reciprocal Provisions pursuant to the Reciprocity Contract between SDCERS and CalPERS shall be included as service for purposes of establishing eligibility for retirement benefits.

1 (Editor's note: Supplement No. 655)

(Amendment voted 03-13-1945; effective 04-09-1945.)

(Amendment voted 04-19-1949; effective 05-20-1949.)

(Amendment voted 03-13-1951; effective 03-26-1951.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Amendment voted 11-06-1990; effective 02-19-1991.)

(Amendment voted 11-08-1994; effective 01-30-1995.)

(Amendment voted 11-05-1996; effective 02-10-1997.)

Section 141.1: Reform of Sworn Police Officer Defined Benefit Pension Plan

Notwithstanding any other provision of this Charter, or any ordinance or other action taken pursuant hereto, the maximum amount of retirement benefit payable to a sworn police officer or police recruit participating in the City's Police Academy, who is hired after the effective date of this section and who is a participant under the Defined Benefit Pension Plan, shall be an amount equivalent to 80% at age 55 of the average of the participant's highest consecutive 36 months of Base Compensation as defined by Section 70.1. The maximum set by this provision shall decrease by 3% (three percentage points) for each year that such participant retires before age 55.

(Addition voted 06-05-2012; effective 07-20-2012.)

Section 141.2: Full and Fair Employee Contributions for The Defined Benefit Pension Plan

For officers and employees who have the legal right to remain in the established Defined Benefit Pension Plan, the City shall contribute annually an amount substantially equal to that required of the employee for a normal retirement allowance, as certified by the Actuary established in Charter Section 142, but shall not contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employee. The City shall not pay, cap the employee contribution rate, or otherwise compensate for any portion of a contribution to the Retirement System by a City Officer or employee.

To the fullest extent permissible by law, in calculating annual contributions for the City and City employees, the Retirement Board shall divide equally between those two parties all costs those costs explicitly and exclusively reserved to the City in this Section and Section 143. Contributions shall also be governed by Section 143 of this Article. In the event of a conflict between this Section and Section 143, this Section shall prevail. This section is not intended to interfere with vested defined rights of any retiree receiving benefits from the Defined Benefit Retirement System or of any employee enrolled in the Defined Benefit Retirement System as of the effective date of this section.

Nothing contained in this Section shall preclude the City from entering into a settlement of *City of San Diego v. San Diego City Employees' Retirement System* Case No. #37-2010-00091207-CU-WM-CTL to define responsibilities of the City and employees for unfunded liabilities of the Retirement System even if the settlement includes terms that might otherwise conflict with the above restrictions, as long as the settlement is approved by the court as a good faith settlement and approved by a two-thirds vote of the City Council.

(Addition voted 06-05-2012; effective 07-20-2012.)

Section 142.1: Employment of Attorneys (New)

The Board of Administration hereinafter provided, may appoint attorneys to advise and represent the Board, as may be necessary. Attorneys hired or retained by the Board shall have duties and responsibilities only to the Retirement System and its Board of Administration and shall not have a duty of loyalty or care to the City of San Diego. Except to the extent that the Board retains outside counsel as consultants, such appointments shall be made under the provisions of Article VIII of this Charter.

Section 143: Contributions [No Change.]

Section 143.1: Approval of Retirement System Benefit [No Change]

Section 144: Board of Administration

Effective April 1, 2005, the system shall be managed by a newly constituted Board of Administration which shall consist of 13 members. Seven members shall constitute a quorum of the Board and the concurring vote of seven members shall be required for the Board to take any action. Prior to April 1, 2005, in anticipation of the effective date, and thereafter, members shall be selected to serve as follows:

(a) Seven (7) members shall be appointed by the Mayor and confirmed by the Council. No person who is a City employee, participant in the Retirement System, or City union representative may be eligible for appointment in this category. Such appointees shall have the professional qualifications of a college degree in finance, economics, law, business, or other relevant field of study or a relevant professional certification. In addition, such appointees shall have a minimum of fifteen (15) years' experience in pension administration, pension actuarial practice, investment management, real estate, banking, or accounting. Members of the Board serving in this category shall serve staggered terms of four (4) years each. Inaugural appointments occurring after the effective date of this section shall have four (4) members serving two (2) year terms and three (3) members serving three (3) year terms. The Board shall determine which open seats shall serve four (4) and three (3) years terms to achieve staggered terms of four (4) years for all subsequent appointments. ~~(Inaugural appointments shall have three (3) members serving two year terms)~~ and ~~in~~ Members in this category shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed. Such appointees shall not have any other personal interests which would create a conflict of interest with the duties of a Board member and trustee.

(b) One (1) police safety member of the Retirement System elected by the active police safety members to serve a four (4) year term, except that the inaugural member elected in 2005 to fill the seat in this category shall serve a two (2) year term.

(c) One (1) fire safety member of the Retirement System elected by the active fire safety members to serve a four (4) year term.

(d) Two (2) general members of the Retirement System elected by active general members of the Retirement System to serve a four (4) year term.

(e) One (1) retired member of the Retirement System elected by the retired members of the Retirement System to serve a four (4) year term, except that the inaugural member elected in 2005 to fill the seat in this category shall serve a two (2) year term.

(f) One (1) City management employee in the administrative service appointed by the ~~City Manager~~ Mayor to serve at the pleasure of the ~~City Manager~~ Mayor, selected from the following: ~~City Manager~~ Chief Operating Officer, City Treasurer, Deputy or Assistant City Manager ~~Chief Operating Officer~~, or person in a similar position who reports to the ~~City Manager~~ Mayor.

The Board of Administration may establish such rules and regulations as it may deem proper; shall elect one of its members president and appoint a secretary and may appoint such other employees as may be necessary. Such appointments, except the actuary, shall be made under the provisions of Article VIII of this Charter.

The Board of Administration shall be the sole authority and judge under such general ordinances as may be adopted by the Council as to the conditions under which persons may be admitted to benefits of any sort under the retirement system; shall have all powers and duties provided in the Declaration of Group Trust for the SDCERS Group Trust effective July 1, 2007 and any amendments thereto or successor trusts hereinafter adopted by Resolution of the City Council; and shall have exclusive control of the administration and

investment of such fund or funds as may be established; and shall be permitted to invest in any bonds or securities which are authorized by General Law for savings banks; and, further, shall be permitted to invest in such additional classes or types of investments as deemed prudent by the Board consistent with its fiduciary duties, ~~are approved by resolution of the Council of the City of San Diego; provided, however, that individual investments within the classes or types approved by the Council must be approved by independent investment counsel; and, provided, further, the Board may place such funds in the hands of the Funds Commission for investment. Provided, however, that the Auditor and Comptroller shall refuse to allow any warrant drawn for payment of a retirement allowance if, in the opinion of the Auditor and Comptroller, such retirement allowance has been granted in contravention of this Article or any ordinances passed under the authority granted herein.~~

(Amendment voted 03-13-1951; effective 03-26-1951.)

(Amendment voted 11-08-1960; effective 01-09-1961.)

(Amendment voted 11-04-1969; effective 01-29-1970.)

(Amendment voted 06-04-1974; effective 08-13-1974.)

(Amendment voted 11-2-2004; effective 04-01-2005)

(Effective 07-08-2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by this Charter were transferred to the Chief Financial Officer. See section 39.)

Prior Language.

Section 145: Retirement Fund

All moneys contributed by employees of the City or appropriated by the Council or received from any other source under the terms of this Article, shall be placed in a special fund ~~in the City Treasury~~ to be known as the City Employees' Retirement Fund, which said fund is hereby created. Such fund shall be a Trust Fund to be held and used only for the purpose of carrying out the provisions of this Article. No payments shall be made therefrom except upon the order of the Board of Administration. This fund may be placed by the Board under the Funds Commission for investment; but shall not be merged with other funds of the City.

Sections 146 through 151 [No Change]

Palmer, Jacqueline

From: McFadden, Kris
Sent: Monday, February 02, 2015 8:07 AM
To: Chadwick, Scott
Cc: Palmer, Jacqueline; Heinrichs, Tony; Yousef, Hasan
Subject: FW: Input req'd: potential updates to City Charter

Scott,

As requested. Please let me know if you have any questions.

Thanks,

Kris

Section 80: Money Required to Be in Treasury

No contract, agreement, or other obligation, involving the expenditure of money out of appropriations made by the Council in any one fiscal year shall be entered into, nor shall any order for such expenditure be valid unless the Auditor and Comptroller shall first certify to the Council that the money required for such contract, agreement or obligation for such year is in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. The certificate of the Auditor and Comptroller shall be filed and made a matter of record in his office and the sum so certified as being in the treasury shall not thereafter be considered unencumbered until the City is discharged from the contract, agreement or obligation. All unencumbered moneys actually in the treasury to the credit of the appropriation from which a contract, agreement or obligation is to be paid and all moneys applicable to its payment which before the maturity thereof are anticipated to come into the treasury to the credit of such appropriation shall, for the purpose of such certificate, be deemed in the treasury to the credit of the appropriation from which the contract, agreement or obligation is to be paid.

An AC commitment to finance the contract would allow more financial flexibility.

Section 94: Contracts

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

Consider changing the language to "best value bidder" (similar managed comp). This will give flexibility in contract awarding if responsible and reliable bidder is not the lowest bid.

Section 98: Alteration in Contracts

Whenever it becomes necessary in the opinion of the City Manager to make alterations in any contract entered into by the City, such alterations shall be made only when authorized by the Council upon written recommendation of the Manager, whenever the cost of such alterations increases the amount of the contract by more than the amount authorized by ordinance passed by the Council. No such alterations, the cost which exceeds the amount authorized by ordinance, shall be valid unless the new price to be paid for any supplies, materials, or work under the altered contract shall have been agreed upon in writing and signed by the contractor and the Manager prior to such authorization by the Council. All other alterations shall be made by agreement in writing between the contractor and the Manager.

Authorize the Mayor/City Engineer to execute CCO's not to exceed 25% of the total contract value.

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:

(17) ~~Managerial employees having significant responsibilities for formulating or administering departmental policies and programs.~~ Each such position shall be exempted from the Classified Service by ordinance, upon the initiation of the appropriate appointing authority and after receiving the advisory review and comment of the Civil Service Commission and the approval of the City Council.

Consider adding the Senior Engineer & POII and similar positions to the unclassified list.

From: Palmer, Jacqueline
Sent: Friday, December 19, 2014 3:17 PM
To: Department Directors Mayoral
Cc: Chadwick, Scott; Executive Secretaries Mayoral
Subject: Input req'd: potential updates to City Charter

This message is sent on behalf of Scott Chadwick.

Please see the attached memorandum from Council President Lightner. In it, the Council President asks for potential updates or modifications to the City Charter from all Directors to be considered in the Special Issues Committee on Charter Review early next year.

Please submit your proposed updates or issues to Scott Chadwick via email (with Jacqueline Palmer on copy) by Monday, February 2.

If you have any questions, please contact our office.

Many thanks,

Jacqueline Palmer
Confidential Secretary to Scott Chadwick, Chief Operating Officer
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
(619) 236-6207
palmerj@sandiego.gov



**COUNCILMEMBER MYRTLE COLE
FOURTH COUNCIL DISTRICT**

M E M O R A N D U M

DATE: February 2, 2015

TO: Council President Sherri Lightner

FROM: Councilmember Myrtle Cole, Fourth Council District *Myrtle Cole*

SUBJECT: Charter Review Committee Priorities for 2015

Thank you for the opportunity to provide my priorities for the Charter Review Committee for 2015.

Citizens' Review Board (CRB) on Police Practices

I ask that the Committee consider Charter changes to:

- Allow the Board to have investigative powers,
- Allow the Board to have subpoena powers, and
- Provide the City Council the authority to confirm appointments to the board. Currently, pursuant to City Charter Article 5 Section 43(d), the Mayor has sole authority over the Board (appoints members of the Board, sets rules and regulations, etc.).

Critics of the CRB have advocated for investigative power and subpoena power, which may require a change in the City Charter. Without this authority, the CRB can only *request* participation and information from the police department with regard to the complaints received.

The City Charter governs the CRB and it is under the purview of the Mayor's office. I am advocating for the necessary Charter changes to provide more authority and oversight to the CRB.

Budgetary Authority

The City Charter should be amended to provide the City Council with the sole authority to initiate Mid-Year Revisions to the budget based on a set of established criteria. Currently, the City Council's authority is contingent upon recommendations made by the Mayor as outlined in Ordinance 20084: The Mid-Year Ordinance.

Equal Opportunity Contracting

It is the City of San Diego's policy to encourage greater availability, capacity development, and contract participation by Small Local Business Enterprises ("SLBEs") in City contracts. The appropriate City departments should provide feedback regarding Charter requirements that restrict or impede the City's ability to expand SLBE participation.

Thank you for the opportunity to share my priorities.

MC:pi



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

OFFICE OF THE INDEPENDENT BUDGET ANALYST

DATE: February 2, 2015

TO: Honorable Council President Sherri Lightner and Members of the Committee on Charter Review

FROM: Andrea Tevlin, Independent Budget Analyst

SUBJECT: Potential Changes to the City Charter – Suggestions from the Office of the IBA

On December 18, 2014, Council President Sherri Lightner issued a memorandum requesting that all Department Directors and City Councilmembers submit potential updates and modifications to the Charter for consideration by the Committee on Charter Review (Committee).

The following are sections of the Charter that the Office of the Independent Budget Analyst (IBA) has flagged for consideration by the Committee for potential updates or modifications.

Charter § 39.3: Independent Budget Analyst

The office of the IBA is currently referred to as the Independent Budget Analyst, but this title does not reflect the full extent of the office's role, which also includes policy analysis.

Potential Option: Consider updating the office's name to the "Office of the Independent Budget and Policy Analyst" to further clarify that the office provides both budget *and* policy analysis for the City Council as currently stated in the Charter.

Charter § 77a: Provisions for Zoological Exhibits

Section 77a of the Charter provides for a tax of "not less than two cents (\$0.02) on each one hundred dollars (\$100.00) of the assessed valuation of the real and personal property within the City, to be used exclusively for the maintenance in Balboa Park of zoological exhibits."

However, the Balboa Park Conservancy notes that "[n]early three hundred million dollars in deferred maintenance projects [at Balboa Park] have been identified; this does not include what it will cost to address the transportation, parking and circulation issues."

Potential Option: Consider amending this provision to provide for other maintenance needs in Balboa Park.

Charter § 86: Disposition of Public Moneys

As is noted in the City Attorney's report to the City Council dated February 5, 2014, Charter section 86 conflicts with Government Code section 50050 regarding public notification and the amount of time the City must hold unclaimed money before it is credited to the General Fund. The Charter currently requires funds to be held for 1 year and does not require a public notice before the money is transferred. Alternatively, the State requires those funds to be held for three years, and for "notice to be published once a week for two successive weeks in a newspaper of general circulation."

Potential Option: Working with the Office of the City Attorney and the Comptroller, consider updating the language in this Charter section. Charter revisions could include aligning the section's requirements with State government code, or requiring a public notice before funds are transferred.

Charter § 90(a): Contracting Bond Indebtedness

Charter section 90(a) provides that "[e]very ordinance or resolution determining that the public interest or necessity demands such improvement shall...require a vote of two-thirds of the electors voting on each proposition at a regular or special election for the issuance of such bonds before said indebtedness or liability for said improvements may be incurred."

Potential Option: Should the State decide to lower the voting requirement on other forms of debt (e.g. bonds for needed infrastructure) or associated revenue increases, consider changing the two-thirds requirement to always be in accordance with State law. For example, the recent authorization of Enhanced Infrastructure Financing Districts allows public financing authorities to issue bonds with support of only 55% of the voters. This change would ensure that the City is not constrained to the current two-thirds Charter voter approval requirement should State law change to allow for a lower voter threshold for any given type of financing or associated revenue increase.

Charter § 90.1: Waterworks and § 90.2: Sewer

As is noted in the City Attorney's report to the City Council dated February 5, 2014, these Charter sections have not been used to issue water or sewer bonds for many years. These sections may no longer be relevant or necessary.

Potential Option: Consider repealing these two Charter sections provided that the Office of the City Attorney has discussed the provisions of these sections with Debt Management and Public Utilities Department staff to ensure that no useful or relevant language would be lost.

Charter § 91: General Reserve Fund

As is noted in the City Attorney's report to the City Council dated February 5, 2014, the General Reserve Fund section of the Charter is contradictory because it refers to it as "a 'revolving fund' that can be expended only in case of emergency."

Potential Option: Consider clarifying this entire Charter section to reflect the City's current reserve structure.

Charter § 97: Collusion in Bidding

Under this section of the Charter, a contract “may be declared null and void” if a party who has been awarded a contract is found guilty of collusion; however, the section also says the Council “shall debar from future bidding all persons or firms found to be in violation of this Section, or any future firm in which such person is financially interested.”

Potential Option: Consider updating the section’s language to make Council action a requirement on both ending a contract *and* the debarment of violators of this section, or to allow for a Council decision on both issues.

Charter § 127: Standards of Efficiency

Currently, section 127 of the City Charter directs the Personnel Director to “fix standards of efficiency and recommend measures for co-coordinating the work of the various Departments and for increasing individual, group, and departmental efficiency.” It is also the “duty of the Personnel Director to fix a minimum standard of conduct and efficiency for each grade in the service, and whenever it shall appear from the reports of efficiency made to the Personnel Director for a period of three months that the conduct and efficiency of any officer or employee has fallen below such minimum that fact shall be reported to the authority responsible for the appointment of such officer or employee.”

Potential Option: Working with the Civil Service Commission, consider clarifying section 127 of the City Charter.

Charter § 265(b)(13): The Mayor

Currently, the Mayor is required by the Charter to cooperate fully with the Council and IBA, including providing “information concerning the budget process and fiscal condition of the City.” Expand this list to include information related to “city policies and programs.”

Potential Option: Consider updating the language of section 165(b)(13) to include “city policies and programs” in the list of requested information that must be provided by the Mayor.

Suggested language:

“To cooperate fully with the Council and the Office of the Independent Budget Analyst, including but not limited to, supplying requested information concerning the budget process, fiscal condition of the City, and CITY POLICIES AND PROGRAMS to the Council and the Office of the Independent Budget Analyst.”

Charter § 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

The Charter currently requires the Council to “introduce a Salary Ordinance fixing the salaries of all officers and employees of the City” no later than April 15 of each year.

Potential Option: Consider adjusting this date to better align with current labor negotiations and budget process schedules.

Changes to the Charter as a Whole:

Potential Inclusion of Current Budget Processes and/or Financial Principles

Potential Option: Consider including budget processes and principles (or portions thereof), established between the two branches under Strong Mayor/Strong Council form of government, including the following:

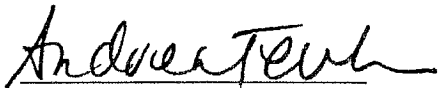
- Mid-year Budget Authority Ordinance
- Statement of Budgetary Principles
- Structural Budget Deficit Principles
- Quarterly (or monthly) Performance Reports

As part of this recommendation, the IBA suggests the Committee consider updating all of Charter section 69 (Fiscal Year and Manager's Estimate) to reflect changes made to the Charter in section 265(b)(14).

References to the Auditor and Comptroller

Effective on July 8, 2008, the authority, power, and responsibilities conferred upon the Auditor and Comptroller by the Charter were transferred to the Chief Financial Officer.

Potential Option: Consider making this change clear by updating references to the "Auditor and Comptroller" in the Charter to "Chief Financial Officer."



Andrea Tevlin
Independent Budget Analyst

cc: Members of the City Council
Kevin Faulconer, Mayor
Jan Goldsmith, City Attorney
Elizabeth Maland, City Clerk
Rolando Charvel, City Comptroller
Hadi Dehghani, Personnel Director
Halla Razak, Public Utilities Department Director
Lakshmi Kommi, Debt Management Department Director



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J. ROBERT O'CONNOR, Foreman

January 30, 2015

CONFIDENTIAL

San Diego City Councilmembers
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

1st

is from
ED & IR docket

3rd should be what it is called

P. 12 Charter Review
Committee

P. 13 Special Issues

14 Committee on

Charter Reform

Re: Grand Jury Report: "Compensation of City of San Diego Elected Officials".

Dear Ladies & Gentlemen:

The 2014/2015 San Diego County Grand Jury herewith provides the referenced report for your review and comment to the Presiding Judge of the Superior Court in compliance with the Penal Code of California §933(c). This report was prepared pursuant to §925a of the Penal Code.

In accordance with Penal Code §933.05(e), a copy of this report is being provided to affected agencies at least two working days prior to its public release and after being approved by the Presiding Judge of the Superior Court.

Please note that §933.05(e) specifies that **no officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to its public release.** This report will be filed with the Clerk of the Court and released to the public on Tuesday, February 3, 2015.

Sincerely,


J. ROBERT O'CONNOR, Foreman
2014/2015 SAN DIEGO COUNTY GRAND JURY

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COMPENSATION OF CITY OF SAN DIEGO ELECTED OFFICIALS



A Report by the
2014/2015 San Diego County Grand Jury
February 3, 2015

COMPENSATION OF CITY OF SAN DIEGO ELECTED OFFICIALS

SUMMARY

The 2014/2015 San Diego County Grand Jury (Grand Jury) found that the process set forth in the San Diego City Charter for setting the salary for the Mayor and Councilmembers is fundamentally flawed. The charter specifies that a Salary Setting Commission must recommend salary changes. Councilmembers must then accept, reduce, or reject that recommendation. In effect that means Councilmembers are required to vote for their own compensation and that of the Mayor.

The salary for elected officials of many other agencies and cities is determined by external benchmarks. In some cases those salaries are linked to the salaries of state Superior Court Judges.

The effect of this process is that Councilmembers and the Mayor have not received a pay raise since July 1, 2003. The annual salary of the Mayor has been frozen at \$100,464 and those of councilmembers have remained at \$75,386.

In that same period the cost of living has increased by over 25%. The resulting relatively low compensation, as compared with private sector salaries for jobs with similar responsibilities, may discourage qualified individuals from running for public office.

The Grand Jury recommends an amendment to the City Charter by which salaries of the Mayor and Councilmembers are determined by an external benchmark. This would eliminate the need for a Council vote on Mayor and City Council salaries.

A Charter amendment requires a simple majority vote of the city's electorate. The next general election is scheduled in June 2016. Irrespective of the possible need for other amendments to the charter, the Grand Jury recommends that a salary setting amendment be developed and placed on the June 2016 ballot for the City of San Diego.

INTRODUCTION

The Grand Jury investigated the process by which the salaries of some City of San Diego elected officials are determined. The Grand Jury suggests the process creates a conflict of interest by requiring Councilmembers to vote for their own base wages.

The present base salary may discourage uniquely qualified individuals from running for office. There is a perception that persons interested in seeking public office must forego higher salary levels normally found in the private sector in order to serve as an elected

official. This perception holds that public officials serve the “common good” for which there may be much public commendation and relatively little compensation.

The question at hand is whether this viewpoint causes some qualified candidates capable of managing a total budget of \$2.8 billion to avoid public office in San Diego. Qualified individuals with managerial expertise often earn substantially more money in the private sector.

The Grand Jury investigation addressed two questions:

1. Does the City Charter need to be amended to eliminate the need for Councilmembers to vote to accept salary increases?
2. Should the base salaries of the Mayor and Councilmembers be determined by a new salary setting process?

PROCEDURE

Members of the Grand Jury interviewed:

- Current and former San Diego City elected officials;
- Members of the City of San Diego Salary Setting Commission;
- Representatives of taxpayer advocacy groups.

Members of the Grand Jury reviewed:

- Salaries of elected officials in comparably sized cities;
- Salaries of other elected officials in San Diego County;
- Salaries of officials in selected private sector corporations;
- Salaries of other city employees, such as council and mayoral staff, department directors and the Chief Operating Officer and his deputies;
- The San Diego City Charter;
- Applicable State regulations;
- Applicable City Attorney Memoranda;
- Media coverage of the City of Bell scandal.

DISCUSSION

City Charter Requirements: Prior to the charter amendment establishing the Salary Setting Commission there had been no raise in base salary for Councilmembers and the Mayor from 1957 through 1973. In November 1973 voters approved amending the City Charter by adding Section 41.1, thereby creating a Salary Setting Commission. The commission consists of seven members appointed for a term of four years by the City of San Diego Civil Service Commission. This gives commission members a degree of independence. Members of other boards and commissions are appointed by the Mayor with confirmation by the City Council.

Sections 12.1 and 24.1 of the charter specify that on or before February 15 of each even year the Salary Setting Commission shall recommend the Council enact an ordinance establishing salaries for Councilmembers and the Mayor for the next two fiscal years. Councilmembers may approve the recommended amounts, some lesser amounts, or reject the recommendation entirely.

The Salary Setting Commission recommended increases for Fiscal Years 2005, 2007, 2009, 2011 and 2013. The City Council enacted no salary ordinances in any of those years.

In February 2014 the Salary Setting Commission recommended no increase for the Mayor and City Council for Fiscal Years 2015 and 2016. This would bring to twelve the total number of years with no increase in compensation.

Charter versus General Law Cities: The California Constitution and the California Government Code both distinguish between Charter and General Law Cities. Charter Cities are governed by their unique charter which serves as a constitution for that city. The charter may specify whether the jobs of the mayor and councilmembers are considered full time or part time.

San Diego City Charter Section 12 (j) specifies that City councilmembers are full time officials. Section 24 contains the same specification for the Mayor.

A charter city may establish the salary of the mayor and councilmembers, per California Constitution article XI, §5(b). There are eighty-six charter cities in California including most of the largest cities in the state.

In the four hundred eighty-six General Law cities in California, elected officials have no executive power. The City Manager has the authority over day-to-day operations. Mayors are typically members of a five person city council and perform mostly ceremonial functions. In 1984, in accordance with California Government Code § 36516, these cities use a salary ceiling based on city population. Increases cannot exceed 5% per year.

City of Bell: The City of Bell is in Los Angeles County. It has a population of about 38,000. In a 2005 special election residents of the City of Bell approved a City Charter that exempted the City Council from the salary limitations imposed on General Law cities. The approved charter imposed no restrictions on salaries and did not establish a mechanism for adjusting salaries.

Though job descriptions and responsibilities were not changed, by 2010 the base salaries, stipends and benefits for the Mayor and three of the other four Councilmembers had increased to almost \$100,000 per council member. The Council also approved significant increases in base salaries and benefits for other city officials, including the Deputy City

Manager and Police Chief. The Council approved a salary in excess of \$700,000 a year for the City Manager. The equivalent position in the City of Los Angeles pays about half that amount.

The Grand Jury does not suggest this would happen in the City of San Diego. Rather, we are citing the City of Bell experience as an extreme example of the inherent conflict of interest that occurs when legislators vote for their own salary. Seeing that conflict, San Diego Councilmembers have been reluctant to accept the recommendations of the Salary Setting Commission.

Budget Balancing: From Fiscal Year (FY) 2007 through Fiscal Year 2012 the Mayor and City Council of San Diego faced major budget deficits. The projected deficit for FY 2011 was \$179 million and for FY 2012 it was \$73 million.

To balance the budget, the Mayor enacted and the Council approved significant service reductions that included but were not limited to:

1. Eliminating about 150 sworn officer positions from the Police Department's budget and laying off civilian employees;
2. Eliminating about 50 sworn firefighter positions;
3. Reducing hours of libraries and recreation centers and eliminating programs in the Park and Recreation Department;
4. Reducing funding for street and sidewalk repairs;
5. Approving 6% across-the-board reductions in total compensation for all City employees, including employees of affiliated agencies, such as the San Diego Data Processing Corporation and the Centre City Development Corporation.

The projection for FY 2018 and FY 2019 indicates an improving financial condition for the City. The five-year financial outlook for FY 2016-2020 projects a surplus of General Fund revenue over expenses of \$109.5 million for FY 2018. For FY 2019 the projected surplus is \$132 million, and for FY 2020 the projected surplus is \$164.1 million. After four priority initiatives are funded, there still remain projected surpluses of \$25.8 million, \$37.8 million, and \$61.8 million for fiscal years 2018, 2019 and 2020 respectively.

Salary Comparisons: The following is presented to support a new salary setting process for the Mayor and City Council:

1. Per data obtained by Grand Jury correspondence in September 2014, the Mayor of San Diego is the lowest paid mayor among the eight largest cities in California, including the three with the Council/Manager form of government. All but Los

Angeles have a smaller population and all but Los Angeles and the City/County of San Francisco have smaller budgets.

2. Per data obtained by Grand Jury correspondence in September 2014, San Diego City Councilmembers are paid \$108,000 less than their counterparts in Los Angeles, \$35,000 less than San Francisco Supervisors, and about \$5,000 less than San Jose Councilmembers.
3. Per data obtained from the City of San Diego Salary Setting Commission in August 2014, seventy nonprofit agencies in San Diego County have chief executives earning \$200,000 or more. Only two of these agencies have more employees and only one takes in more revenue than the City. One of these nonprofit executives works for a City affiliated corporation and earns five times * more than a Councilmember.
4. Per data obtained from the City of San Diego Salary Setting Commission in August 2014, all of the one hundred highest paid chief executives in private industry in San Diego County have base compensation of at least \$50,000 more than the Mayor and at least double the salary of Councilmembers.
5. Per data obtained from the State of California Controller's website, at least fifteen chief executives of Special Districts (Water Districts, Transportation Districts, etc.) in California make triple to quadruple what the Mayor is paid.
6. Per data obtained by Grand Jury correspondence in October 2014, eight of the City's top managers earn at least twice as much as the Mayor; thirty-eight unclassified employees earn at least twice as much as a City Councilmember.

Table I shows the salaries of the mayors and councilmembers in the eight largest cities in California by population, as determined by Grand Jury correspondence with each of the cities in September 2014.

TABLE I

CITY	POPULA- TION	PROCESS	MAYOR SALARY	COUNCIL- MEMBER SALARY	TOTAL BUDGET	MEDIAN FAMILY INCOME
Los Angeles	3,884,307	Salary of 15 Councilmembers is that of Sup. Court Judges; Mayor 30% more	\$235,679	\$184,000	\$8.1 Billion	\$49,745
San Diego	1,345,895	9 councilmembers vote on their own and Mayor's salary but cannot exceed salary recommended by salary setting commission	\$100,464	\$75,386	\$2.8 Billion	\$62,395
San Jose	1,000,536	Mayor and 10 councilmembers vote on own salary but cannot exceed salary recommended by salary setting commission.	\$104,999	\$80,999	\$2.9 Billion	\$80,090
San Francisco	837,442	City/County salary of Mayor and 11 supervisors set by Civil Service Commission	\$285,319	\$110,858	(City & county) \$8.582 Billion	\$73,802
Fresno	515,609	Mayor and 7 councilmembers salary set by ordinance	\$130,000	\$65,000	\$995.4 Million	\$38,386
Sacramento	475,122	Mayor and 8 councilmembers have their salaries set by a citizens' commission, chaired by a retired judge	\$117,861	\$62,032	\$872 Million	\$64,513
Long Beach	470,292	Mayors salary automatically indexed to CPI annually; 9 councilmembers paid 25% of mayor	\$136,150	\$34,041	\$3 Billion	\$47,837
Oakland	406,253	Salary of Mayor set by Council indexed to average salary of officials in six other cities; salary of council set by public ethics commission, according to CPI	\$183,395	\$81,550	\$1 Billion	\$59,511

The City of San Jose is closest to the City of San Diego in terms of population, budget and Mayor/Council salaries. The Mayor and Councilmember salaries in San Jose are substantially unchanged since FY 2005.

Table II compares the current salaries of elected officials in the same eight major cities with what their jobs paid in fiscal year 2006. Over the last ten years the average wage increased by about 20% although there was wide divergence from the average with respect to mayoral salaries. San Diego is the only city where neither the Mayor nor Councilmembers received an increase. Data was obtained by Grand Jury correspondence with each city in September 2014.

TABLE II

CITY	FY2015 Salary Mayor	FY 2006 Salary Mayor	% Increase Mayor	FY 2015 Salary Council- member	FY 2006 Salary Council- member	% Increase Council- member
Los Angeles	\$235,679	\$193,908	22%	\$184,000	\$149,160	23%
San Diego	\$100,464	\$100,464	0%	\$75,386	\$75,386	0%
San Jose	\$104,999	\$105,019	0%	\$80,999	\$75,094	13%
San Francisco	\$285,319	\$179,140	59%	\$110,858	\$90,740	22%
Fresno	\$130,000	\$99,360	31%	\$65,000	\$44,511	46%
Sacramento	\$117,861	\$100,776	17%	\$62,032	\$53,040	17%
Long Beach	\$136,150	\$111,326	22%	\$34,041	\$27,832	26%
Oakland	\$183,395	\$183,295	0%	\$81,550	\$66,896	22%
Average Increase			20.1%			21.9%

Strong Mayor, Strong Council: Proposition F in November 2004 added Article XV (Sections 250 through 295) to the City Charter, transforming the governance of the City of San Diego from Council-City Manager to Mayor-Council. This type of city management is often called the “Strong Mayor” form of government.

Article XV moved the duties and responsibilities of the City Manager to the Mayor, conferring more executive authority, duties and responsibility on the Mayor. These duties include but are not limited to:

1. Supervising the annual preparation of the City’s budget;

2. Hiring and firing a Chief Operating Officer, Police and Fire Chiefs, and other department directors;
3. Managing the day-to-day operations of the City;
4. Exercising veto power over proposed legislation (newly added to Charter).

As a result of the change to the Strong Mayor form of governance the City Council's role expanded. There is increased activity of Council Committees and more proposed legislative items are being referred to committees.

The number of Council Committees has expanded from five to seven. An Audit Committee was added in 2008 and an Infrastructure Committee in 2013. A separate Economic Development Committee was established in 2012 which, in 2014, became the current Economic Development and Intergovernmental Relations Committee.

In addition, Proposition F (2004) created the position of City Council President, who is elected from among the Councilmembers. The President's responsibilities include serving as chair for Council meetings and managing the process of putting items on the agenda.

Among the expanded duties of the City Council are:

1. Approval of the Mayor's proposed budget with the ability to add or delete budgetary items based on budget reviews with each department and public input;
2. Ongoing budget monitoring with the ability to add or delete items once at mid-year;
3. Spearheading the need for new regulations, taking public testimony and brokering compromises (if necessary) on various issues;
4. Monitoring infrastructure needs and funding priorities; improving the process for getting infrastructure contracts approved;
5. Monitoring the creation and implementation of the five-year plans for the Fire and Rescue Department and the Police Department;
6. Actively advocating for public/private partnerships;
7. Approving (or denying) major development projects and setting the conditions for approval where indicated; hearing appeals of decisions by the City Planning Commission; and hearing appeals on decisions of the Historical Resources Board;
8. Overseeing the wind-down of the Redevelopment Agency; approving related activities by Civic San Diego and the San Diego Housing Commission.

Based on the Grand Jury's observation and witness testimony, the typical work week of a City Councilmember exceeds sixty hours, consisting of but not limited to:

1. Meetings of the full City Council;
2. Council Committee meetings;
3. Preparation for agenda items;

4. Briefings with Council and/or Department staff;
5. Attendance at events in the Community;
6. Meetings with constituents, both at City Hall and in the community; and
7. Meetings with lobbyists.

The Grand Jury finds that the following facts merit consideration due to:

1. Expanded duties and responsibilities under the Strong Mayor form of government;
2. The fact the Mayor and Councilmembers have had no cost of living increase since 2003;
3. The fact they receive substantially lower salaries than their top management; and
4. The fact they receive lower compensation for the same or similar positions in cities of lesser size.

Increasing the compensation may result in the recruitment of additional qualified candidates with demonstrated executive ability for the Offices of the Mayor and City Council.

Benchmarking: The one common thread in all the testimony the Grand Jury heard on this subject was that Councilmembers should not be voting on their own salaries. The majority of those who testified also opined that salaries were too low. Most believe that, if left unchanged, governance of the City would eventually be left to either wealthy people or those with relatively limited experience.

Even witnesses who opposed any increase in compensation agreed that the City Charter should be amended to remove Councilmembers from the process. Some external benchmark should be found. The two most common external benchmarks adopted by other California Cities are:

1. Linkage to salaries of Superior Court Judges, with increases based on the average wage increase for state employees, as approved by the State legislature;
2. Linkage to a commonly used Cost of Living Adjustment (COLA), such as the Consumer Price Index published by the Federal Bureau of Labor Standards.

The City Council considered variants of both these options in the 2008-2009 time frames but ultimately voted against any salary increase on March 30, 2009. The Grand Jury is neither recommending any specific process nor that any specific salary amount be adopted. We do, however, offer variations of the two scenarios mentioned above as illustrations of what could be done.

Option 1: Linkage to the Salary of Superior Court Judges

The current salary of a Superior Court Judge is \$184,000 per year. Two of the large government agencies the Grand Jury looked at currently use this benchmark:

1. The City of Los Angeles: City Councilmembers (15) receive 100% of a Superior Court Judge's base salary, per City Charter.
2. The County of San Diego: Members of the Board of Supervisors (5) receive 80% of a Superior Court Judge's base salary, per County Charter.

Increases for these benchmarks are determined periodically by the State Legislature and are usually based on average wage increases for State employees. The most recent increase went into effect on July 1, 2014.

Table III indicates what the Mayor's salary would be if benchmarked to a certain percentage of that of a Superior Court Judge with the corresponding salary for Councilmembers, if based on 75% of the Mayor's salary:

TABLE III

<u>Percentage</u>	<u>Mayor Salary</u>	<u>Council Salary (75% of Mayor)</u>
100%	\$184,000	\$138,000
90%	\$165,600	\$124,200
80%	\$147,200	\$110,400
70%	\$128,800	\$96,600
60%	\$110,400	\$82,800
Current	\$100,464	\$75,386

This benchmarking approach allows for more than one possibility:

1. The percentage of the Mayors Salary for Councilmembers could be raised or lowered.
2. The salaries for Councilmembers could be benchmarked to those of Superior Court Judges with the Mayor receiving a certain percentage above the Council.

Most importantly, if voters approve the recommended Charter amendment, Councilmembers would no longer be put in the uncomfortable position of having to vote on their own salary increases. The amount of those raises would be established by an act of the State Legislature.

Option 2: Linkage to the Consumer Price Index

The Consumer Price Index (CPI) is determined by tracking price changes of consumer goods and services in a given market over a period of time. It is based on data compiled by the Bureau of Labor Statistics of the United States Department of Labor. The CPI is used by many public and private agencies to determine cost of living adjustments for their beneficiaries or employees. The City of Long Beach uses the CPI to determine the amount of raises for its Mayor and Councilmembers.

The CPI for the San Diego Urban Area is published semi-annually for the periods ending December 31 and June 30. Adding the CPI percentage increases (and one decrease in

2009), as of June 30 each year since 2004 we arrive at how much the cost of living has increased since the Mayor and Council last received a salary increase. That figure is 27.1 %, an average of 2.5% per year over eleven years.

Since the proposed charter amendments would not go into effect until FY 2018 at the earliest, we have added another 7.5% representing the anticipated average CPI increase of 2.5% for 2015, 2016 and 2017. The total of 34.6% could be applied to the current salary to establish a base salary effective July 1, 2017 for future cost of living increases.

Using this option, the base salaries compute as follows:

Mayor: \$100,464 x 1.346 = \$135,225

Council: \$75,386 x 1.346 = \$101,696

Many variations of this option are also possible. For example, Councilmembers could index Council salaries by a fewer number of years, say the most recent five years. They could adopt no proposed increase to current salaries and apply the CPI on a go-forward basis.

If this option, or something similar, were adopted the charter amendment could be worded to have the salaries indexed annually on the certification of the CPI by the Controller or Chief Financial Officer. Under this option the salary adjustments would be determined by the Bureau of Labor Statistics and would no longer require a vote of the Council.

The Grand Jury suggests that these and/or other options be discussed in open session and fully vetted. The desired outcome would be a proposed amendment to the City Charter.

City Attorney and City Auditor: The Grand Jury considered whether the salaries of the City Attorney, an elected official, and the City Auditor, who is appointed to a term of ten years by contract, should be subject to the same external benchmark as the Mayor and City Council. Both have the need to be independent of the Mayor and Council. There is the possibility of that independence being compromised if they are dependent on the Council for their salaries.

The salary of the City Attorney is fixed by the City Council. It cannot be decreased during a term of office and cannot be less than \$15,000 per year. The current salary for the City Attorney is \$193,648. The annual compensation of the City Auditor is based on the recommendation of the Audit Committee to the City Council, which is charged with approving it. The Audit Committee is composed of two Councilmembers and three public members appointed by the Council. The annual compensation for the City Auditor is \$168,000.

Our investigation of this issue was inconclusive. Some witnesses said the current process works well; some testified that both their salaries should be subject to an external

benchmark. Some proposed to change the process for one or the other, but not both. Some major cities in California have appointed City Attorneys. Others have elected City Auditors.

Accordingly, the Grand Jury decided not to pursue this issue. However, it is worth exploring by a City Council Committee or Charter Review Committee.

Charter Review Committee: The City Attorney in a memo to the Mayor and the City Council dated October 22, 2013 stated "The City Charter has provisions that are ambiguous, outdated and incomplete." He also wrote that "key governance provisions are not addressed." Among other things, he recommended the formation of a Charter Review Commission. Several Councilmembers agreed with him at a public meeting of a City Council Committee.

Most recently, the City Attorney in a report to the City Council dated February 5, 2014, identified 53 (out of 295) sections of the City Charter that were in need of deletion or revision. He also mentioned the option of a Charter Review Commission. This would provide a means of soliciting public input and making recommendations to the Mayor and City Council on what to put on the ballot.

The Grand Jury notes that the City Attorney has included the recommendations contained in two recent Grand Jury reports in his summary of potential Charter revisions. These recommendations deal with the process for selection of members of the Redistricting Commission and the process for removal of elected officials.¹

The City's response to both of those reports was that a Charter amendment would be required and that it would be more economical if all Charter amendments were added to the ballot at the same time. Accordingly, it would be appropriate that the members of the Charter Review Committee be chosen in sufficient time to get the salary setting recommendation, along with other suggested amendments, on the June 2016 ballot.

Based on recent history the deadline for Council action to place an item on the June ballot occurs in late February. A Charter Review Committee would need about nine months to a year (based on the Charter Review of 2007) to vet all 53 revisions identified by the City Attorney and other proposed revisions.

At the November 19, 2014 meeting of the City Council's Economic Development and Inter-governmental Relations Committee, the committee discussed a proposal to establish

¹ 2011/2012 San Diego County Grand Jury Report *City of San Diego 2010 Redistricting Commission* <http://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2011-2012/RedistrictingReport.pdf> and 2013/2014 San Diego County Grand Jury report *Updating San Diego's City Charter* <http://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2013-2014/UpdatingSanDiegoCityCharterReport.pdf>

a Special Issues Committee on Charter Reform. The proposed committee would begin at the earliest feasible time and end on June 30, 2016. It would make prioritized recommendations to the full Council for its vote to place on the ballot for either June 2016 or November 2016. The proposed committee would consist of four voting Councilmembers and representatives from the Offices of the Mayor, City Attorney, Independent Budget Analyst, City Clerk and Legislative Affairs. *

The proposed Charter Review Committee was approved unanimously by the full City Council on December 8, 2014. The Grand Jury recommends this committee fully vet linking the salary of the Mayor and Councilmembers to an external benchmark and that it recommend putting the issue on the ballot in 2016.

FACTS AND FINDINGS

Fact: The Salary Setting Commission was established to make biennial recommendations to the City Council on the compensation of the Mayor and City Council.

Fact: The City Council has not enacted an ordinance incorporating the Salary Setting Commission's recommendations, or some lesser amount, since 2002.

Fact: The duties of the Mayor and, to a lesser extent, those of the City Council, have expanded since 2006, when the current Strong Mayor form of government took effect.

Fact: City Councilmembers are reluctant to enact an ordinance raising their own salary.

Finding 01: Salaries of Councilmembers and the Mayor should be tied to an external benchmark.

Fact: Changing the process for setting the compensation for the Mayor and Councilmembers would require an amendment to the City Charter.

Fact: Recognizing the need for multiple changes to the Charter, the City Attorney has recommended the creation of a Charter Review Commission.

Fact: A City Council Special Issues Committee on Charter Reform has been created. *

Finding 02: A Charter Review Committee should be formed by the end of March 2015 in order to meet deadlines for City Council approval for the June 2016 ballot.)

RECOMMENDATIONS

The 2014/2015 San Diego County Grand Jury recommends that the San Diego City Council:

15-01: Place on the June 2016 or November 2016 ballot a proposed amendment to the City Charter which would:

Amend Section 12.1 by linking the salaries of councilmembers to an external benchmark effective July 1, 2017;

Amend Section 24.1 by linking the salary of the mayor to an external benchmark effective July 1, 2017;

Delete Section 41.1 which would then abolish the City of San Diego Salary Setting Commission effective June 30, 2017.

15-02: Through the newly created Special Issues Committee on Charter Reform, fully vet the recommended Salary Setting Amendment proposed here. *

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or

department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Due Date</u>
City Council, City of San Diego	15-01 through 15-02	May 4, 2015