

Office of  
The City Attorney  
City of San Diego

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SAN DIEGO, CALIF.

MEMORANDUM  
MS 59

(619) 236-6220

**DATE:** May 17, 2007  
**TO:** Elizabeth Maland, City Clerk  
**FROM:** Michael J. Aguirre, City Attorney  
**SUBJECT:** Submission of Ballot Proposals to Amend the San Diego City Charter to Provide for: (1) an Elected City Auditor; (2) Subpoena Power for the City Attorney; and (3) the Right of the Public to Participate in Government

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Council Policy 000-21 provides procedures through which members of the public and independent department heads may submit ballot proposals to the City Council for consideration. In conformance with this Council Policy, the City Attorney submits three ballot proposals to the City Clerk. The proposed measures, which are attached, seek voter approval to amend the San Diego City Charter to provide for: (1) an elected City Auditor; (2) subpoena power for the City Attorney; and (3) the right of the public to participate in government.

Council Policy 000-21 contemplates an independent department director submitting a 1472 and including a "proposed resolution directing the City Attorney to prepare appropriate ballot language for the proposal." Because the proposals are being submitted directly by the City Attorney, this procedure does not appear to apply to this office. For this reason, we have submitted with this memorandum the draft ordinances and appropriate ballot language necessary to place the measures on the ballot. Accordingly, please promptly transmit the three attached ballot proposals to the Rules Committee consultant, as required by Council Policy 000-21, for placement on the Rules Committee meeting agenda. We will coordinate with the Rules Committee consultant if any additional information is required. We appreciate your assistance with respect to this matter.

MICHAEL J. AGUIRRE, City Attorney

By

  
Michael J. Aguirre  
City Attorney

MJA:als  
Enclosures

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE XIV, BY ADDING SECTIONS 227 AND 227.1, REGARDING RIGHT TO PARTICIPATE IN GOVERNMENT.

WHEREAS, pursuant to San Diego City Charter section 223, article XI, section 3(b), of the California Constitution, and California Elections Code section 9255(a)(2), the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-\_\_\_\_\_, adopted on \_\_\_\_\_, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego by amending article XIV, to add sections 227 and 227.1; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by article XI, section 3(b) of the California Constitution, California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

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

Section 1. That one proposition amending the City Charter by amending article XIV, to add sections 227 and 227.1, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

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**PROPOSITION**

**Section 227: Right to Participate**

The right of the people to participate in local government shall not be violated. The people have a right to participate in all government decisions including, without limitation, budget priorities, the monitoring of City services, and land use planning.

**Section 227.1: Neighborhood Empowerment: Community Planning Groups**

In order to carry out the right of the people to participate in government and to make government more responsive to local needs, a citywide system of community planning groups shall be established and recognized by the Council. The community planning groups shall include representatives of the many diverse interests in communities and shall have an advisory role on issues of concern to local neighborhoods. Community planning groups may adopt Community Impact Statements that summarize their official position on City issues for consideration by the Council. The Council shall establish guidelines and policies for recognition of community planning groups and approval of their bylaws. Subject to applicable law, the Council may delegate its authority to community planning groups to hold public hearings prior to the Council making a decision on a matter of local concern. The Council may adopt ordinances concerning community planning groups to further the purpose of this section.

**END OF PROPOSITION**

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Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

|  |     |  |
|--|-----|--|
| <b>PROPOSITION ____ . AMENDS THE CITY CHARTER TO AFFIRM THE RIGHT TO PARTICIPATE IN GOVERNMENT AND FORMALIZE RECOGNITION OF COMMUNITY PLANNING GROUPS</b>  | YES |  |
| Shall the Charter be amended to affirm the people's right to participate in government and provide a process for recognized community planning groups to advise the Council on issues of concern to local neighborhoods? | NO  |  |

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or

deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to Sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_

Deputy City Attorney

CMB:als  
5/17/07  
Or.Dept: CityAtty  
O-2007-xx

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTION 39, AMENDING ARTICLE III, SECTION 10, AND AMENDING ARTICLE XV, SECTION 265, ALL REGARDING AN ELECTED CITY AUDITOR AND CONTROLLER.

WHEREAS, pursuant to San Diego City Charter section 223, article XI, section 3(b), of the California Constitution, and California Elections Code section 9255(a)(2), the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-\_\_\_\_\_, adopted on \_\_\_\_\_, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego by amending article V, section 39, and adding sections 39.1, 39.2, 39.3, 39.4, and 39.5, amending article III, section 10, and amending article XV, section 265; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by article XI, section 3(b) of the California Constitution, California Elections Code

section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

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

Section 1. That one proposition amending the City Charter by amending article V, section 39, and adding sections 39.1, 39.2, 39.3, 39.4, and 39.5, amending article III, section 10, and amending article XV, section 265 is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

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### PROPOSITION

#### **~~Section 39: City Auditor and Comptroller~~**

~~The City Auditor and Comptroller shall be elected by the Council for an indefinite term and shall serve until his successor is elected and qualified. The City Auditor and Comptroller shall be the chief fiscal officer of the City. He 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 him and approved by the City Manager and the Council. He shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Auditor and Comptroller shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He shall perform the duties imposed upon City Auditors and Comptrollers by the laws of the State of California, and such other duties as may be imposed upon him by ordinances of the Council, but nothing shall prevent the Council from transferring to other officers matters in charge of the City Auditor and Comptroller which do not relate directly to the finances of the City. He shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. He shall appoint his subordinates subject to the Civil Service provisions of this Charter.~~

#### **Section 39: Auditor and General Accountant**

The Auditor and Controller shall be the auditor and general accountant of the City and shall exercise a general supervision over the accounts of all offices, departments, boards

and employees of the City charged in any manner with the receipt, collection or disbursement of the money of the City. The Auditor and Controller shall be elected by the people for a term of four (4) years as prescribed by Section 10 of this Charter. Notwithstanding any other provision of this Charter, no person shall serve more than two (2) consecutive four-year terms as Auditor and Controller. If for any reason a person serves a partial term as Auditor and Controller in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision.

### **Section 39.1: Powers and Duties**

The Auditor and Controller shall:

(a) appoint assistants, deputies, clerks and other persons as the Council shall prescribe by ordinance;

(b) prescribe the method of keeping all accounts of the offices, departments, boards or employees of the City in accordance with generally accepted accounting principles, except that any change of the system of accounting shall first be authorized by the Council;

(c) regularly review the accounting practices of offices and departments and upon finding serious failings in accounting practices, be empowered to take charge of the accounting function, and thereafter assist the office or department in implementing appropriate accounting standards and practices;

(d) maintain a complete set of accounts which shall be deemed the official books and accounts of the City, which shall show at all times the financial condition of the City, the state of each fund, including funds of departments responsible for managing their own funds, the source from which all money was derived and for what purposes all money has been expended;

(e) in compliance with generally accepted government auditing standards, audit all departments and offices of the City, where any City funds are either received or expended; be entitled to obtain access to all department records and personnel in order to carry out this function; establish an auditing cycle to ensure that the performance, programs and activities of every department are audited on a regular basis, and promptly provide completed audit reports to the Mayor, Council, and City Attorney and make those reports available to the public;

(f) maintain a reconciliation between the accounts in all offices and departments with the accounts in the Auditor and Controller's office, and from time to time, verify the condition of all City funds in the City Treasury, and report to the Mayor and Council thereon;



(g) allocate among the several respective funds all public money at any time in the City Treasury not otherwise specifically allocated and appropriated by law or ordinance, and promptly notify the Treasurer of the allocation or appropriation;

(h) report to the Mayor and Council, at times established by law, the condition of each fund, and make other reports as the Mayor or Council requests;

(i) maintain each fund on a parity with its obligations at all times by transferring from the Reserve Fund as a loan to any fund which may become depleted through tardy receipt of revenues, and upon receipt of revenues sufficient to make an allocation as will restore each fund to parity, retransfer the amount of the loan to the Reserve Fund;

(j) monitor the level of debt incurred by the City and report periodically to the Mayor and Council on City debt; and

(k) conduct performance audits of all departments and may conduct performance audits of City programs, including suggesting plans for the improvement and management of the revenues and expenditures of the City. Nothing in this subsection shall preclude the Mayor or Council from conducting management studies or other review of departmental operations.

### **Section 39.2: Approval of Demands on Treasury**

(a) The Auditor and Controller shall, prior to approval of any demand, make inspection as to the quality, quantity and condition of services, labor, materials, supplies or equipment received by any office or department of the City, and approve before payment all demands drawn upon the Treasury if the Auditor and Controller has adequate evidence that:

(1) the demand has been approved by every board, officer or employee whose approval is required by the Charter or ordinance;

(2) the goods or services have been provided, except that advance payment may be authorized by ordinance for specified categories of goods and services;

(3) the payment is lawful;

(4) the appropriation for the goods or services has been made;

(5) the prices charged are reasonable;

(6) the quantity, quality and prices correspond with the original specifications, orders or contracts; and

(7) any additional criteria established by ordinance have been satisfied.

(b) Notwithstanding subsection (a), the Auditor and Controller shall delegate to the various offices and departments the duties of inspection of goods and services and approval of demands, in accordance with methods for inspection and approval established by the Auditor and Controller, but the Auditor and Controller may suspend the authority delegated pursuant to this subsection upon a finding of abuse of that authority or on a determination that the office or department lacks adequate controls to exercise that authority properly. In the event of suspension of the authority delegated pursuant to this subsection, the Auditor and Controller shall assist the office or department to achieve adequate controls and standards prior to reinstatement of that authority to the office or department.

(c) The Auditor and Controller shall withhold approval of any demand, in whole or in part, if there is a question as to whether it is improper, illegal, or unauthorized, and immediately file a report with the Mayor and Council stating the objections to the demand. The Council shall promptly consider the report and may overrule or sustain the objections of the Auditor and Controller.

(d) The Auditor and Controller shall keep a record of all demands on the Treasury approved by the Auditor and Controller and of all demands to which objections have been made and overruled.

### **Section 39.3: Approval of Expenses of Auditor and Controller**

All demands for the expenses of the office of the Auditor and Controller shall, before payment, be presented to the Mayor, who shall have the same powers as to approval or disapproval as are exercised by the Auditor and Controller in the case of other demands. The action of the Mayor shall be subject to review by the Council.

### **Section 39.4: Reduction of Demand on Treasury**

No demand upon the Treasury shall be allowed by the Auditor and Controller in favor of any person or entity indebted to the City without first deducting the amount of the indebtedness, to the extent permitted by law.

### **Section 39.5: Payment of Bonds**

Nothing in this Article shall be construed as interfering with or preventing the payment by the Treasurer of principal and interest on bonds payable by the City in accordance with the California Constitution, laws and ordinances authorizing the issuance and payment of those bonds.

## **ARTICLE III**

### **Section 10: Elections**

Elective officers of the City shall be nominated and elected by all of the electors of the

City except that City Council members other than the Mayor shall be nominated and elected by the electors of the district for which elective office they are a candidate. Commencing with the year 1996, the municipal primary elections to the office of Council member for Districts 1, 3, 5, and 7 shall be held on same date in each election year as the California State primary election, and the general municipal election for these offices shall be held on the same date as the California State general election for that year. Commencing with the year 1998, the municipal primary elections to the offices of Council member for Districts 2, 4, 6, and 8 shall be held on same date in each election year as the California State primary election, and the general municipal election for these offices shall be held on the same date as the California State general election for that year.

Commencing with the year 1984 the elections to the offices of Mayor and City Attorney shall be held every four (4) years. The municipal primary election for the offices of Mayor, Auditor and Controller and City Attorney shall be held on the same date in each election year as the California State primary election, and the general municipal election for these offices shall be held on the same date as the California State general election for that year. All other municipal elections which may be held under this Charter shall be known as special municipal elections.

All elective officers of the City shall be nominated at the municipal primary election. In the event one candidate receives the majority of votes cast for all candidates for nomination to a particular elective office, the candidate so receiving such majority of votes shall be deemed to be and declared by the Council to be elected to such office. In the event no candidate receives a majority of votes cast as aforesaid, the two candidates receiving the highest number of votes for a particular elective office at said primary shall be the candidates, and only candidates, for such office and the names of only those two candidates shall be printed upon the ballots to be used at the general municipal election. At the general municipal election held for the purpose of electing Council members other than the Mayor the electors of each Council district shall select from among the candidates chosen at the primary election in that district one candidate for the office of the Council member whose term expires the succeeding December. At the general municipal election held for the purpose of electing any other elective officer there shall be chosen by all of the electors of the whole City from among the candidates chosen at the primary one candidate to succeed any other elective officer whose term expires in December succeeding the election.

After the result of an election for any office is declared, or when an appointment is made, the City Clerk, under his hand and official seal, shall issue a certificate therefor, and shall deliver the same immediately to the person elected or appointed, and such person must within ten days after receiving such certificate file his official bond, if one be required for his office, and take and subscribe to the oath of office required of him by this Charter, which oath must be filed with the City Clerk.

## ARTICLE XV

### Section 265: The Mayor

(a) The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for purpose of serving civil process, for the signing of all legal instruments and documents, and by the Governor for military purposes.

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

(1) To be the chief executive officer of the City;

(2) To execute and enforce all laws, ordinances, and policies of the City, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the City.

Nothing in this section shall be interpreted or applied to add or subtract from powers conferred upon the City Attorney in Charter sections 40 and 40.1;

(3) To recommend to the Council such measures and ordinances as he or she may deem necessary or expedient, and to make such other recommendations to the Council concerning the affairs of the City as the Mayor finds desirable;

(4) To attend and be heard at any regular or special open session meeting of the Council, but not the right to vote at such meetings;

(5) To approve or veto actions passed by the Council in open session, pursuant to sections 280 and 290;

(6) To attend and be heard at any closed session meeting of the Council, but not the right to vote at such meetings. When present, the Mayor shall preside over closed session. When the Mayor does not attend closed session, the Presiding Officer of the Council shall chair the closed session meeting;

(7) Sole authority to appoint the City Manager, subject to Council confirmation;

(8) Sole authority to direct and exercise control over the City Manager in managing those affairs of the City under the purview of the Mayor as expressly permitted in the Charter;

(9) Sole authority to dismiss the City Manager without recourse;

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

~~(10)(11)~~ Notwithstanding contrary language in Charter sections 30, 39, 57 or 58, authority to dismiss the City Auditor and Comptroller, the Chief of Police or the Chief of the Fire Department, subject only to a right for these city officials to appeal to the City Council to overturn the Mayor's decision.

Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Mayor. The City Clerk shall thereafter cause the appeal to be docketed at a regular

open meeting of the City Council no later than 30 days after the appeal is filed with the Clerk;

~~(11)~~(12) As provided for in Charter sections 41 and 43, the authority to appoint members of City boards, commissions, and committees, subject to Council confirmation;

~~(12)~~(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor;

~~(13)~~(14) To cooperate fully with the Council and the Office of Independent Budget Analyst, including but not limited to, supplying requested information concerning the budget process and fiscal condition of the City to the Council and the Office of Independent Budget Analyst; and

~~(14)~~(15) To propose a budget to Council and make it available for public review, no later than April 15.

(c) On or before the 15th day of January of each year, the Mayor shall communicate by message to the City Council a statement of the conditions and affairs of the City, and make recommendations on such matters as he or she may deem expedient and proper. In time of public danger or emergency, the Mayor shall take command of the police, maintain order, and enforce the law.

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

(e) If a vacancy occurs in the Office of Mayor for any reason other than a successful recall election, and,

(1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacancy.

(2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

(A) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the Office of Mayor.

(B) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within forty-nine days of the first special election, unless there is regular municipal or statewide election scheduled to be held within ninety days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two candidates receiving the highest number of votes cast for the Office of Mayor in the first special election

shall be the only candidates for the Office of the Mayor and the names of only those two candidates shall be printed on the ballot for that seat.

(f) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

(g) Whether a person is appointed or elected to the Office of Mayor, whatever the reason for the vacancy, that person shall serve as Mayor for the remainder of the unexpired term.

(h) Upon the appointment or election of any person to the Office of Mayor, any other City office held by that person is automatically vacated.

(i) During the period of time when an appointment or election is pending to fill a vacancy in the Office of Mayor, the presiding officer of the Council shall be vested with the authority to supervise the staff remaining employed in the Office of the Mayor, to direct and exercise control over the City Manager in managing the affairs of the City under the purview of the Mayor and to exercise other power and authority vested in the Office of the Mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority would not include the exercise of the power of veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the Office of Mayor. The presiding officer, while acting under this section pending the filling of a mayoral vacancy, shall not lose his or her rights as a member of the Council.

(j) For purposes of this section, a vacancy may result from death, resignation, or recall. If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

### **END OF PROPOSITION**

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Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

|  |     |  |
|--|-----|--|
| <b>PROPOSITION ____ . AMENDS THE CITY CHARTER TO PROVIDE FOR AN ELECTED CITY AUDITOR AND CONTROLLER</b><br>Shall the Charter be amended to provide for an elected City Auditor and Controller? | YES |  |
|  | NO  |  |

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to Sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_

Deputy City Attorney

CMB:als

5/17/07

Or.Dept: CityAtty

O-2007-xx



ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTION 40, REGARDING SUBPOENA POWER OF THE CITY ATTORNEY.

WHEREAS, pursuant to San Diego City Charter section 223, article XI, section 3(b), of the California Constitution, and California Elections Code section 9255(a)(2), the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O-\_\_\_\_\_, adopted on \_\_\_\_\_, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego by amending article V, section 40; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by article XI, section 3(b) of the California Constitution, California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

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

Section 1. That one proposition amending the City Charter by amending article V, section 40, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

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**PROPOSITION**

**Section 40: City Attorney**

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

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

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their

full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

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

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

papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office. In addition, the City Attorney may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items necessary to be used in any suit, or required for the purpose of the office.

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

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

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

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

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

**END OF PROPOSITION**

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Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

|   |     |  |
|---|-----|--|
| <b>PROPOSITION ____ . AMENDS THE CITY CHARTER TO GRANT SUBPOENA POWER TO THE CITY ATTORNEY</b><br>Shall the Charter be amended to grant the City Attorney power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of any books, papers, records, or other items necessary to be used in any suit, or required for the purpose of the office? | YES |  |
|   | NO  |  |

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. Pursuant to Sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_

Deputy City Attorney

CMB:als  
5/17/07  
Or.Dept: CityAtty  
O-2007-xx