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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** March 4, 2009

**IBA Report Number:** 09-15

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# Process for Appointment of an Independent City Auditor

## OVERVIEW

Proposition C approved by the voters in June 2008 amended the City Charter to put into place a number of financial reforms including the appointment of an Independent City Auditor, as well as an independent Audit Committee. (See Attachment A – Proposition C Ballot Language) The new Charter provisions called for the City Auditor to be appointed by the City Manager (Mayor) in consultation with the (new) Audit Committee and confirmed by the City Council. Upon Council confirmation, the Auditor will serve for a 10-year period; report directly to the Audit Committee; and can be removed for cause only upon recommendation of the Audit Committee and by 2/3 vote of the City Council.

## FISCAL/POLICY DISCUSSION

### Recruitment and Selection of Current Internal Auditor

Our current Internal Auditor, Eduardo Luna, was appointed in October 2007, to recreate a much needed internal audit function that had essentially been disbanded since early 2006. Numerous recommendations were made by Kroll, the IBA and the Independent Consultant, Stan Keller, for this position to be independent of management (Mayor). However, the City Attorney opined that a Charter revision was necessary to achieve independence as recommended by auditing standards, such as having the Auditor report directly to the Audit Committee, rather than the Mayor, and implementing a reconfigured Audit Committee independent of the Mayor.

Nevertheless, the importance of putting an internal audit function into place, while continuing to work toward voter approval of Charter amendments to achieve auditor independence, was recognized by all parties.

In March 2007, the Mayor and existing Audit Committee agreed to a recruitment process, as recommended by the IBA (07-37 “Internal Auditor Recruitment”), that involved active participation by both branches. The Audit Committee was involved in the appointment process for Eduardo Luna as recommended in IBA Report 07-37:

- “Interaction with the outside recruiter who will assist the City in reaching out to highly qualified candidates. The Audit Committee should be able to share their aspirations for a candidate who will be working closely with them in the interim and who may ultimately report directly to them.
- For the same reason cited above, a comprehensive job description should be developed that conveys the expectations and responsibilities for the position to qualified candidates including financial auditing and performance auditing.
- An opportunity to independently interview all qualified candidates (with support from the IBA if desired) in order to make an informed recommendation to the Mayor for consideration.
- The ability to communicate with and provide feedback to the selected outside recruiter regarding the qualifications or caliber of identified applicants.
- Cooperative and collaborative participation with the Mayor’s assigned staff throughout the entire recruitment process to achieve a common goal of finding the best candidate for the City’s internal auditor position.”

At the time of appointment, Mr. Luna was made aware of the pending Charter changes relative to the position and the likelihood of a new appointment process being required following voter approval of new Charter language.

#### Role of New Audit Committee in Appointment of Independent City Auditor

As noted earlier, Proposition C created an independent City Auditor and also created an independent Audit Committee to consist of two Council members and three public members. Proposition C called for the Mayor to appoint the Auditor “in consultation with the Audit Committee” and then be confirmed by the City Council. Shortly after Proposition C was approved, the City Attorney opined that this “consultation” must occur with a newly seated Audit Committee that conformed with the new Charter language, rather than the existing Audit Committee.

The Charter language called for the three public members of the new Audit Committee to be appointed by the Council from “a pool of at least two candidates for each vacant position, to be recommended by a screening committee consisting of a Council member,

the Chief Financial Officer, the Independent Budget Analyst and two outside financial experts, appointed by the other three members, and confirmed by the Council.”

This process which included extensive recruitment efforts over the summer and screening and vetting of applicants through the fall took several months to accomplish. Council transitions took place in early December, followed by appointment of the new Audit Committee on January 5, 2009. With the new Audit Committee seated, the appointment of the City Auditor can proceed. Upon confirmation by the Council, the City Auditor will report directly to the Audit Committee rather than to management (Mayor) consistent with auditing standards and as required by Proposition C.

#### Recommended Process for Appointment of Independent City Auditor

On March 3, 2009, Jay Goldstone, Chief Operating Officer, issued a memorandum to the Audit Committee recommending the appointment of Eduardo Luna to the position of City Auditor. As noted earlier, Mr. Luna was appointed in October 2007 following a search and interview process which involved the original Audit Committee. As this is the first such appointment to be made by the Audit Committee, the Committee may wish to agree upon and formalize a process prior to considering the Mayor’s nomination. This process could consist of the following steps:

- Mayor to submit nomination and justification to the Audit Committee at least 10 days prior to the scheduled Committee meeting.
- Upon receipt of Mayor’s nomination, Audit Committee Chair to invite nominee to appear before the Audit Committee at the next scheduled meeting.
- Nominee to present background, qualifications, accomplishments and vision to Audit Committee.
- Audit Committee to ask questions as necessary to vet the nominee. (See Attachment B – AICPA Audit Committee Toolkit: Sample Candidate Questions)
- Audit Committee to vote to approve the Mayor’s nomination and forward to Council for confirmation, or reject the Mayor’s nomination.
- If approved, Council President to docket at next available Council agenda.
- If rejected, the Mayor to consult with the Audit Committee on an alternate nominee; or, if needed, a new recruitment process.

In the March 3 memorandum, the Mayor is also recommending that the Council authorize him to negotiate the specific terms and conditions for an employment agreement for Mr. Luna. This appears to be in conflict with Proposition C. Per Proposition C, once confirmed, the Auditor will report directly to the Audit Committee rather than the Mayor. Proposition C also requires the Audit Committee to recommend

annual compensation for the Auditor; annual budget of the Auditor’s office; and be responsible for the Auditor’s annual performance review. Additionally, it is only upon recommendation of the Audit Committee and 2/3 vote of the Council that the Auditor can be terminated (for cause). Given the spirit of these new Charter requirements, we recommend either the Council President or the Audit Committee Chair take the lead role in negotiating the terms for an employment agreement with the selected City Auditor similar to the hiring of the Independent Budget Analyst, whose agreement was negotiated by the Council President. The IBA is available to assist as needed.

**[SIGNED]**

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Attachments (2)

Attachment A – Proposition C Ballot Language

Attachment B – AICPA Audit Committee Toolkit:

“Sample Interview Questions for Audit Executive”