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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** April 22, 2011

**IBA Report Number:** 11-24

**Rules Committee Date:** April 27, 2011

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# Unresolved Issues from the 2007 Charter Review Commission

## OVERVIEW

On March 9, 2011 the Rules, Open Government, and Intergovernmental Relations Committee (Rules) held preliminary discussions on the possibility of making changes to the City's Charter. At that meeting the City Attorney was directed to review the issue of the referendum process and the Office of the Independent Budget Analyst (IBA) was directed to work with the City Attorney to determine which unresolved issues from the 2007 Charter Review Report should be discussed further and return to the Committee with an overview in April.

In January of 2007, the Mayor requested that the City Council assist in forming a Charter Review Committee (Committee). Each member of the City Council was asked to recommend an individual to represent each district. The mission of the Committee, as outlined by the Mayor, was to:

- Determine modifications necessary to implement the Kroll Report recommendations and other financial reforms;
- Clarify the roles and responsibilities of elected officials and the separation of powers under the Strong Mayor form of governance;
- Identify modifications that would improve the functionality of the Strong Mayor form of governance during the trial period;
- Identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance.

For six months the Committee and three Subcommittees held 51 meetings and developed a list of eleven recommendations for changes proposed for the 2008 Ballot. These

eleven recommendations included changes to the Interim Strong Mayor and Legislative process; financial reforms and the Kroll Report; and, Duties of Elected Officials. Many of the eleven recommendations with changes by the City Council were included on the June 2008 Ballot. The items included on the June 2008 Ballot included:

**Proposition A (Passed with 67.94% Yes Votes)**

- Exempted from the Managed Competition process the core public safety services provided by police officers, firefighters, and lifeguards.

**Proposition B (Passed with 76.81% Yes Votes)**

- Required the City Council to place a single measure on the ballot at the June 2010 election to have voters decide whether:
  - The Strong Mayor form of governance should become permanent effective January 1, 2011;
  - Increase the number of City Council districts from eight to nine in conjunction with the next City Redistricting process after the national census in 2010;
  - Increase the number of Council votes needed to override the Mayor's veto to two-thirds of the nine-member Council, after the ninth Council seat is filled by election.

**Proposition C (Passed with 63.00% Yes Votes)**

- Amended the Charter to:
  - Clearly separate the City's internal auditing function from supervision of the Manager (Mayor) by creating the new Officer of City Auditor;
  - Created the City's Audit Committee;
  - Provide that the Manager (Mayor) would appoint, with Council confirmation, the new Chief Financial Officer, who would assume the City's account responsibilities and oversee the City Treasurer. Appointment of the Treasurer would no longer require Council confirmation.
  - Make permanent the Office of the IBA exclusive of the form of government.

In addition to the eleven recommendations, the Committee also identified three changes for future ballots and eleven items for a future charter committee or commission. As directed by the Rules Committee on March 9, 2011 this report provides an overview of the "unresolved issues" (the three items for future ballots and the eleven items for a future charter committee). In addition, this report provides additional information and recommendations if warranted and also one additional suggestion by the IBA concerning the Environmental Growth Fund for the Rules Committee's consideration. The IBA has also provided this report in advance to the City Attorney's Office for their review.

One last item of note that the Rules Committee should take into consideration when reviewing this report is the expense associated with putting measures on a future ballot. In developing this report, the IBA requested the City Clerk to provide an estimate from the Registrar of Voters (ROV) for including an item on an upcoming ballot. The City Clerk provided our office with the following very conservative estimates for a *single, five-page ballot* measure:

- Consolidated with the June 2012 Election \$843,000 - \$845,000
- Consolidated with the November 2012 election: \$318,000 - \$320,000
- Stand-alone polls election: \$2.8 million - \$3.4 million

## FISCAL/POLICY DISCUSSION

### Proposed Charter Changes for a Later Ballot

#### **Appointment process for Boards, Commissions, Committees, and other governmental agencies (Committee Voted 14-0 in favor of placing on a later ballot)**

In their 2007 report, the Charter Committee recommended amending Charter §265 to also allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor. The Committee's concern was that under the new form of government the Mayor was removed "from any role in appointing the City's representatives to outside organizations." The example used by the Committee was that state law grants the City Council the power to select the City's representative to the San Diego Unified Port District.

Since the change in the form of government, the subject of appointment authority to boards, commissions, corporations, and agencies has been well researched by the City Attorney's office. The authority for appointments is best summarized in a February 28, 2006 City Attorney's Report to the Rules Committee:

"With respect to appointments to boards and commissions, the Charter amendments retained the Mayor's "authority to appoint members of City boards, commissions, and committees, subject to Council confirmation" (San Diego Charter sections 41,43, and 265 (b)(12)). The City Council also retained its powers "to establish committees of the Council and to establish advisory boards and citizen committees as provided for in Charter section 43 (San Diego Charter §270). This includes the City Council's power to remove committee and board members by majority vote; and to appoint members to any such boards or committees should the Mayor fail to do so with 45 days of a vacancy occurring, or after a board is established (San Diego Charter §43).

“A new addition to the Charter is the Mayor’s “[s]ole 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” (San Diego Charter §265(b)(13). The Charter amendments did not specifically address the appointing authority to entities such as City corporations, and other entities where the “controlling law” is not clear. These matters can be complex.”

In addition to the City Charter sections, the appointments to boards and commissions is also governed by City Council Policy 000-13 (See Attachment A) which establishes a uniform procedure for the appointments and confirmation of members of commissions, boards, committees, authorities, districts, and councils. However, it should be noted that this policy was last updated in 1984 and does not reflect the changes to the form of government. This was noted in a February 1, 2006 City Attorney report to the Rules Committee that suggested revisions to Council Policy 000-13.

**IBA Recommendation:** The IBA recommends that Council Policy 000-13 be updated to reflect the current form of government.

**Authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. (Committee Voted 10-4 in favor of placing on a later ballot with 1 absent)**

This proposed charter change by the Committee was in response to the Mayor being removed from the redevelopment process as a result of the change in the form of government. With the change in the form of government in January 2006, the Mayor was removed as a voting member of the Council and Redevelopment Agency Board. In order to create a role for the Mayor in Redevelopment, the Agency Board appointed the Mayor as Executive Director on an interim basis while options for restructuring were evaluated, and a permanent role for the Mayor determined. The Mayor has since been reappointed nine times and his current term runs through the end of the calendar year.

In December 2010, the Agency Board created a Redevelopment Ad-Hoc Committee to convene for a period of one year to study potential changes to Agency governance structure, including designation of the Executive Director and role of the Mayor in redevelopment. The Ad-Hoc Committee is anticipated to continue meeting throughout 2011.

On January 10, 2011, Governor Brown released the 2011-2012 Proposed State of California Budget, including a proposal to eliminate redevelopment agencies. While no final action has been taken at this point, the State legislature continues to deliberate on this and other budget proposals. Should the Governor’s proposal to eliminate redevelopment agencies be approved, the Redevelopment Agency of the City of San

Diego would be prohibited from taking any further action as of the date of approval, and would be disestablished as of July 1, 2011.

**IBA Recommendation:** The IBA does not recommend that any Charter amendments concerning redevelopment be placed on the ballot until the State budget proposal has been resolved and the Redevelopment Ad-Hoc Committee has completed its work.

**Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse. (Committee Voted 7-7 with 1 absent for placing on a later ballot)**

The Personnel Department is governed by the Civil Service Commission which is appointed by the Mayor and confirmed by the City Council. The main responsibilities of the Personnel Department are to provide supervision over the selection, promotion, and removal of all classified employees and maintain a competitive merit system that provides equal opportunity for all applicants. The Personnel Department is headed by the Personnel Director who is appointed by the Civil Service Commission. The Personnel Director's responsibilities are identified in Charter Section 37. In addition to his/her duties as the department head, the Personnel Director is also the Secretary of the Civil Service Commission.

The Charter Review Committee proposed a change to the City's Charter based on other Strong Mayor Cities where the mayor has the authority to appoint their Personnel Director. The proponents of this recommendation pointed out that the Personnel Director was an anomaly in that it is the only officer appointed by the Civil Service Commission. In addition, the proponents believed that the proposed language would clarify that the executive branch of the City is under the control of the Mayor as Chief Executive and not to diffuse responsibility.

The opponents of the recommended change, including the Personnel Director at the time, stated that the Personnel Director's role is to maintain the function of ensuring that City workers have an unbiased and impartial person with whom they can discuss working conditions and issues and that if the Personnel Director served at the pleasure of the Mayor, his or her impartiality would not be assured.

In researching this report, our office contacted the current Personnel Director for his thoughts on this proposed change. Many of his comments were similar to those expressed by the previous Personnel Director. Specifically he noted that many of the duties assigned to the Personnel Director were meant to be overseen by the independent Civil Service Commission. With the Personnel Director reporting to the Mayor, the oversight responsibility and functions of the Commission would be effectively eliminated. This independent oversight has served the City well in maintaining consistency and fairness in personnel matters as originally intended.

**IBA Recommendation:** The IBA agrees with the former and current Personnel Directors that the City's structure allows classified staff the opportunity to discuss working conditions and issues with a neutral department. The IBA does not recommend further action on this item.

## 2007 San Diego Charter Review Committee Items Researched, But Needing Further Study by a Future Charter Committee or Commission

### Appointment of City Attorney

The Subcommittee on Duties of Elected Officials considered the issue of whether San Diego's City Attorney should be elected or appointed. The committee noted that this issue had been raised in previous charter review committees. In addition, the Committee as a whole considered amending Charter Section 40 (City Attorney) to include professional qualifications and also define the authority of the office and who the client of the Attorney should be. This recommendation was not included on the June 2008 ballot.

In response to the Committee's discussion on amending the charter, the former City Attorney responded in a September 2007 Report. In his report, the former City Attorney noted that his position had been an elected officer answering directly to the people for 76 years and this had given the City Attorney necessary independence. He also noted that the independence had been critical to the constitutional balance of powers and the goal of ensuring honesty in City government.

**IBA Recommendation:** The IBA does not have a recommendation for this item.

### Automatic Charter Review

The Subcommittee on Interim Strong Mayor recommended that the Charter include an amendment that requires an automatic periodic review process, under which a committee or commission is formed at regular intervals to examine the charter.

**IBA Recommendation:** The IBA would note that the Mayor and City Council at any time can elect to create a charter review committee and/or direct the City Attorney to undertake a review of the charter for obsolete sections. At a possible cost of \$843,000 - \$3.4 million to put an item on the ballot, given that the Mayor and City Council already have the authority to review the charter or create a review committee when needed, we recommend no further action on this item.

### Budgetary Authority

The Committee noted that the City Charter is at present silent on the matter of mid-year course corrections to the budget and that many City Charters establish a clear process for

handling of intra and inter-departmental mid-year transfers. Today, this issue continues to be a source of confusion.

At the March 2, 2011 Budget and Finance Committee (B&FC) meeting, the IBA presented a report, based on a recent City Attorney opinion, regarding the City Council's lack of authority to initiate Mid-Year Revisions to the budget (Report #11-10). In response to the IBA's report, the B&FC directed the City Attorney's Office to provide legal advice and feedback on the report.

In their March 28, 2011 response to the IBA's report, City Attorney staff concluded that the Charter vests all authority to initiate revisions to the adopted budget or transfer appropriations in the Mayor. In addition, neither the City Council nor the Mayor may adopt policies or procedures that would conflict with the Charter. Based on this response, the B&FC directed the Budget Committee Consultant to work with the offices of the IBA and City Attorney, and in consultation with the Financial Management Department to revisit and refine the Statement of Budgetary Principles and also bring back recommendations for consideration for a potential charter amendment.

**IBA Recommendation:** The IBA supports including a charter amendment that would enable the City Council the authority to make mid-year budget adjustments based on a set of established criteria.

#### **City Investment Policies**

After reviewing other cities reserve policies and finding that the City of San Diego's Charter did include some provisions for reserves, the Subcommittee on Financial Reform examined the broader issue of whether the City's investment policies needed modification or adjustment. No changes were suggested by the Subcommittee and the recommendation was more that the City might need to examine its asset management in order to see whether it is possible to achieve a higher return on investments for some funds.

The IBA would note that the City already has in place a thorough review process for the City's investment policies. Per California Government Code §53646, the City of San Diego's Investment Policy is annually reviewed and approved by the City Council. Prior to Council review, the City Treasurer's Investment Advisory Committee (IAC) also reviews the policy changes and makes additional recommendations. The Investment Policy is a formal statement of objectives and constraints for the City's investment approach.

**IBA Recommendation:** Due to the fact that the City already has a thorough review process for its investment policy that is required by state law, the IBA does not recommend further action on this item.

### **Filling Vacancies**

At the request of the City Council, the Subcommittee on Duties of Elected Officials looked into the matter of filling vacancies in City offices. The Subcommittee reviewed other cities charters for processes but did not have a recommendation.

**IBA Recommendation:** The IBA believes that the processes for filling a Council seat vacancy as outlined in Charter Section 12 and for filling a Mayoral vacancy as outlined in Charter Section 265 are clear and as recent history has shown, these processes have enabled the City to move forward quickly when needed. The IBA does not recommend further action on this item.

### **Independent Budget Analyst's Status**

The Subcommittee on Interim Strong Mayor recommended clarifying that the Office of the Independent Budget Analyst's Duties include providing policy advice to the City Council and also the status of the office if the Strong Mayor-Strong Council form of government expired. In June 2008, as part of Proposition C, the Office of the IBA was made permanent. In addition, the language include in the proposition clarified that the IBA "shall provide budgetary and *policy* analysis for the City Council" (Charter §39.3).

**IBA Recommendation:** The IBA does not recommend further action on this item.

### **Integration of Strong Mayor Concept into City Charter**

Charter Article XV Section 260 integrates the changes related to the Strong Mayor-Strong Council into the overall charter which still retains many of the titles from the Council-Manager form of government including "City Manager". As noted by the Subcommittee on Interim Strong Mayor, if the language regarding the Mayor, Council, the executive branch, and the budget were placed in the original sections of the Charter the document would be less confusing.

**IBA Recommendation:** The IBA agrees with the findings of the Subcommittee on Interim Strong Mayor that the issue of integration of the Strong Mayor-Strong Council into the Charter should be considered, especially with the form of government now being permanent. However, as noted in the Overview section of this report, the volume of changes that could be required to integrate the Charter and include on a future ballot could be cost prohibitive.

### **Intergovernmental Relations**

After researching other cities intergovernmental relations processes, the Subcommittee on Interim Strong Mayor noted questions that were not addressed in the City's Charter. These questions included:



- Who should advocate for the City when it is affected by the decisions of other levels of government, and the branches thereof?
- Who should decide whether the City files an *amicus brief* in an important case?

Although the City’s Charter does not specifically address these questions, the City’s Municipal Code does. San Diego Municipal Code Section 22.1901- Department of Intergovernmental Relations outlines the responsibilities of the Department Director and the department. The responsibilities of the department as outlined in the Municipal Code include:

- a) Develop for City Council approval City legislative programs for the state and federal legislative sessions.
- b) Represent the City before state and federal legislative and administrative bodies.
- c) Analyze and submit reports on state and federal legislations affecting the City.
- d) Maintain liaison with and assist the City’s state and federal legislative delegations in any matter of interest to the City.
- e) Initiate and assist other City departments and City organized or created entities in identifying, seeking and receiving federal and state grants and coordinate through legislative advocacy those grant efforts.
- f) Administer contracts and oversee independent contractors responsible for state and federal lobbying efforts.
- g) Perform related work as directed.

**IBA Recommendation:** The IBA does not have a recommendation for this item. Per the City Attorney, a Charter change is not necessary to effectuate changes such as additional oversight of the department’s legislative program. Such changes may be incorporated into the Municipal Code or a Council Policy as long as they do not conflict with Charter requirements or other applicable laws.

**Mayor’s Role in Closed Session**

The Subcommittee on Interim Mayor noted that when the Mayor was removed from the Council as a component of the change in the form of government, this created an “anomalous situation for handling the kinds of things that are done in closed session.” The subcommittee noted that there are closed session matters at which the City would want the Mayor to be present, such as when handling important litigation or establishing strategy for negotiations with companies. In addition, the Subcommittee noted that the

authors of Proposition F wanted the Mayor to be a part of closed session meetings, but did not want to cloud the executive-legislative separation by having the Mayor exercise a vote. Given the importance of the issue that arise in closed session meetings, the Subcommittee thought that this subject was worthy of study.

Charter Section 265 (6) states that the Mayor 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. It is important to note that the Mayor and his staff are active participants in closed session meetings and he continues to chair the meetings when available. In his absence, the Council President serves as the Chair of the meetings.

In regards to the Mayor having a vote during Closed Session, the City Attorney notes that Closed Sessions are governed by the Brown Act and apply to meetings of the legislative body. The Mayor is not part of the legislative body and may not vote in open or closed sessions of the City Council. The Charter provides that the Mayor has a right to attend and be heard at any closed session meeting of the Council. The Charter also requires that the Council rules provide a process for the City Attorney, Mayor, and Council President to coordinate the docketing of Closed Session matters. Finally, the Mayor has the opportunity to approve or veto any resolution authorizing any settlement that is approved in an open session meeting of the City Council.

**IBA Recommendation:** The IBA notes that Charter Section 265(6) already gives the Mayor the authority to attend and chair closed session meetings. He may also approve or veto actions taken by the Council in open session that relate to Closed Session matters. Accordingly, the IBA does not recommend further action on this item.

### **Possibility of Opting into CalPERS**

The Subcommittee on Financial Reform briefly looked at the possibility of opting into the CalPERS retirement system. After hearing from SDCERs asset managers, legal counsel and the public employee unions, the subcommittee found insufficient evidence to determine whether there is an immediate need for change in this area and recommended that it should be looked at in the future.

On June 8, 2010, the San Diego County Grand Jury issued a report to the Mayor, City Council, San Diego City Employees Retirement System (SDCER), the City's Audit Committee, and the City's Auditor. The purpose of the Grand Jury's report was to assess the financial issues facing the City and also determine what brought the City to its current financial condition. The report also proposed strategies to mitigate the City's budgetary deficits. The Grand Jury Report included twenty seven findings and sixteen recommendations. Grand Jury Recommendation 10-127 stated "Investigate alternate retirement systems to determine whether the San Diego City Employees' Retirement System (SDCERS) should be dissolved in favor of another system, a purely outsourced

operation, or retention of the current system.” The City responded as follows to Recommendation 10-127:

“Disagree. This recommendation will not be implemented because it is not warranted or reasonable. At this time, the City Charter essentially provides for two alternatives for the administration of the City’s retirement plan. These are either SDCERS or CalPERS. To move the administration of the plan to CalPERS would require a majority approval of all active members of SDCERS. In addition, the City’s retirement factors and system requirements would have to conform to one of the options currently offered by CalPERS. This may not be possible because vested rights of active and retired members would have to be protected.”

**IBA Recommendation:** The IBA does not recommend further action on this item. The City would have to conform to CalPERS pension options and system requirements, which may not be possible given that the vested rights of members would have to be protected. Additionally, other solutions have been implemented and continue to be pursued for reducing the City’s retirement costs and addressing the City’s budget deficits.

#### **Timing of Budget Process**

The Subcommittee on Interim Strong Mayor included the timing of the budget process in its initial work plan. The Subcommittee was concerned that some of the hard deadlines that the Charter established for the budget were difficult to meet.

**IBA Recommendation:** As one of the departments significantly impacted by the dates established in the Charter for the Budget, our office does not believe that changes are required to the deadlines. After five years, the City has adjusted to the April 15 deadline established in the Charter for the Mayor to propose his annual budget. Based on this date, the Budget & Finance Committee Chair is able to establish a budget review schedule that provides the City Council over two months to review the proposed budget. This includes two weeks for the IBA to review the proposed budget and present our findings to the City Council. In addition, the Charter does not preclude the Mayor or City Council from discussing possible budget options sooner than the April 15 deadline as the Council has aggressively pursued for Fiscal Year 2012.

#### **IBA Suggested Item for Review**

##### **Environmental Growth Fund**

On March 22, 2010, the IBA issued Report No. 10-30 regarding City of San Diego Restricted Revenues. The report describes that some of the City’s revenue sources are guided by restrictions outlined in the City’s Charter, its Municipal Code, and/or Council Policies, and these restrictions or limitations either reduce general revenue sources that would otherwise flow to the General Fund, or require certain funding levels within the

General Fund. One such revenue source is franchise fees the City receives for the transmission and distribution of gas, electricity and steam within the City of San Diego.

SDG&E, the single largest generator of franchise fee revenue, is charged 3% of the gross sales of gas and electricity within the City of San Diego. As outlined by City Charter Section 103.1a, 25 percent of all moneys derived from these revenues are to be placed in the Environmental Growth Fund (EGF). The EGF is to be used exclusively for the purpose of preserving and enhancing the environment of the City of San Diego, provided that two-thirds is to be used for debt service for bonds for the acquisition, improvement and maintenance of open space to be used for park or recreational purposes. If there are no such bonds outstanding or if two-thirds of the EGF exceed the amount necessary to service outstanding bonds then those moneys shall be used for the purpose of preserving and enhancing the environment of the City of San Diego.

The Fiscal Year 2011 Budget for SDG&E franchise fee revenue is \$49.8 million. \$12.5 million is estimated to be deposited into the EGF, with \$37.3 million projected to be allocated to the General Fund.

<b>Franchise Fees– SDG&amp;E</b>		
<b>(in millions)</b>		
<b>FY</b>	<b>General Fund</b>	<b>EGF</b>
2006	\$35.0	\$11.7
2007	\$39.2	\$13.1
2008	\$38.7	\$12.9
2009	\$40.3	\$13.4
2010	\$41.4	\$13.8
2011	\$37.3	\$12.5

As budgetary constraints have intensified over the last several years, competing priorities arose for General Fund resources. As past EGF bond obligations have been paid off, the newly available EGF funds have been directed to support existing eligible General Fund Park and Recreation programs and capital projects. Over time, the General Fund has become reliant on the EGF to maintain these diminishing services. A change to this approach without the identification of other resources will create an additional burden for the General Fund.

If the City intends to continue to use the EGF to support General Fund park maintenance and similar functions, as is currently the case, consideration should be given to seeking a possible change to the Charter. Eliminating this Charter requirement would permit all gas and electric franchise fee revenue to be received by the City’s General Fund, and would remove the restriction that revenues be dedicated to park and open space improvements, providing greater budgetary flexibility.

## **CONCLUSION**

As directed by the Rules Committee on March 9, 2011, the IBA has developed this report to provide an overview of the “unresolved issues” (the three items for future ballots and the eleven items for a future charter committee). In addition, this report provides additional information and recommendations if warranted and one additional suggestion by the IBA concerning the Environmental Growth Fund for the Rules Committee consideration. Based on our analysis we recommend the following items be researched further for possible inclusion on a future ballot:

- Update Council Policy 000-13 regarding the processes for Appointment to Boards, Commissions, Committees, and other governmental agencies to reflect the current form of government;
- A charter amendment that would enable the City Council to make mid-year budget adjustments based on established criteria;
- Elimination of existing restrictions related to the Environmental Growth Fund.

However, we would reiterate that the cost/benefit associated with such charter amendments be carefully considered. We would also recommend that the Mayor and the past members of the 2007 Charter Committee be provided an opportunity at a later Rules Committee meeting, if desired, to express their ideas on future charter amendments.

**[SIGNED]**

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Jeffrey Sturak  
Deputy Director

**[SIGNED]**

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APPROVED: Andrea Tevlin  
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Attachments: 1. Council Policy 000-13  
2. 2007 San Diego Charter Review Committee Final Report