

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** December 11, 2023

**TO:** Diana J.S. Fuentes, City Clerk

**FROM:** City Attorney

**SUBJECT:** Title, Summary, and City Attorney Impartial Analysis for Ballot Measure – Amendments to the San Diego City Charter, by amending Article V, section 40, related to the elected City Attorney, and adding a new section 40.2, related to Legal Counsel for the Office of the City Auditor and Audit Committee, hired by contract instead of the elected City Attorney.

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The San Diego City Council (City Council) directed the City Attorney to prepare a ballot title, summary, and impartial analysis of a ballot measure, seeking voter approval to amend the San Diego City Charter (Charter), by amending Article V, section 40, related to the elected City Attorney, and adding a new section 40.2, related to Legal Counsel for the Office of the City Auditor and Audit Committee.

By San Diego Ordinance O-21744 (Nov. 6, 2023), the City Council voted to place this measure on the March 4, 2024, Municipal Special Election ballot in the City of San Diego, consolidated with the California State Presidential Primary Election. The City Council called the Municipal Special Election, by San Diego Ordinance O-21743 (Oct. 31, 2023), and consolidated it with the California State Presidential Primary Election, by San Diego Resolution R-315189 (Oct. 31, 2023).

**BALLOT TITLE**

Amendments to the San Diego City Charter section 40 and the addition of a new section 40.2, authorizing the City Auditor and Audit Committee to use outside legal counsel instead of the elected City Attorney.

## **BALLOT SUMMARY**

This measure would amend the San Diego City Charter (Charter) to authorize the City Auditor and the Audit Committee to use outside legal counsel instead of using the elected City Attorney, subject to certain conditions, when the Audit Committee determines the use is in the public's interest.

If approved by a majority vote of those qualified to vote on the measure, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

## **CITY ATTORNEY'S IMPARTIAL ANALYSIS**

On April 7, 1931, the voters of the City of San Diego (City) added an elected City Attorney position to the San Diego City Charter (Charter). Under Charter section 40, the City Attorney, who is elected by qualified voters citywide, serves as the chief legal adviser of, and attorney for the City and all Departments and offices. City departments must use the elected City Attorney unless the City Attorney has a legal conflict, as defined by the California Rules of Professional Conduct, or lacks the specialized skill or resources necessary to complete the assigned work.

In 2004, City voters amended the Charter to authorize the Ethics Commission to retain its own outside legal counsel, and in 2020, City voters amended the Charter to authorize the Commission on Police Practices to retain its own outside legal counsel. This measure would again amend Charter section 40 and add a new section 40.2 to authorize the City Auditor and the City's Audit Committee to retain and use outside legal counsel to assist those officials with their responsibilities. The City Auditor, who is appointed by the City Council, conducts audits and may investigate any material claim of financial fraud, waste, or impropriety within the City

Auditor's purview under Charter section 39.2. The City's Audit Committee, comprised of two members of the San Diego City Council and three members of the public, directs and reviews the City Auditor's work and has oversight responsibility regarding the City's financial and business practices under Charter section 39.1.

For the City Auditor or the City's Audit Committee to use outside legal counsel, the Audit Committee must determine that such use is in the public's interest. It would not be necessary to show that the City Attorney has a conflict of interest or lacks the specialized skill or resources necessary to complete the assigned work.

The City Council must approve the contract used to retain outside legal counsel and determine funding each fiscal year. Legal counsel may be hired only after complying with applicable laws, including the City's required competitive procurement processes. The City Council may, by ordinance, create additional rules related to the outside legal counsel consistent with the Charter language.

Any attorney-client relationship between outside legal counsel and the City Auditor, the City Auditor's subordinates, and the Audit Committee must be formed in a manner consistent with California law and the Rules of Professional Conduct of the State Bar of California.

This measure was placed on the ballot by the City Council, following a proposal by the City Auditor. If approved by a majority of the qualified voters voting on the measure, the Charter amendment would become effective when the California Secretary of State officially chapters it.



**THE CITY OF SAN DIEGO**

**FISCAL IMPACT LANGUAGE AUTHORIZATION FOR  
MARCH 2024 BALLOT MEASURES**

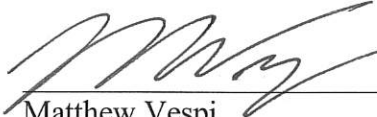
As part of the preparation of the fiscal impact analysis procedure outlined in Municipal Code section 27.0506, the decision of any two of the three designated parties (the Mayor, or his designee; the Independent Budget Analyst; and the City Auditor) will result in the final fiscal impact analysis. The undersigned state their agreement or disagreement with the final fiscal impact analyses for the March 2024 election. Note that the City Auditor recused himself from this decision, as the ballot measure would impact the Office of the City Auditor.

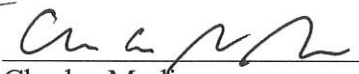
**CHARTER AMENDMENT REGARDING INDEPENDENT LEGAL COUNSEL FOR  
THE OFFICE OF THE CITY AUDITOR AND AUDIT COMMITTEE**

Agree   
Disagree

Agree   
Disagree

Agree   
Disagree

  
\_\_\_\_\_  
Matthew Vespi  
Chief Financial Officer  
Mayoral Designee

  
\_\_\_\_\_  
Charles Modica  
Independent Budget Analyst

RECUSED  
\_\_\_\_\_  
Andy Hanau  
City Auditor

**CHARTER AMENDMENT REGARDING INDEPENDENT LEGAL COUNSEL FOR THE OFFICE OF THE CITY AUDITOR AND AUDIT COMMITTEE**

**Fiscal Impact**

This measure would allow the Office of the City Auditor and the City's Audit Committee to contract for outside legal counsel, independent from the Office of the City Attorney, for legal support and advice in certain audits, investigations, and related activities. Any contract would be subject to approval from the City Council, and each use of that contract would be on an as-needed basis and subject to approval from the Audit Committee.

Actual costs for independent legal counsel would vary annually, depending on how frequently independent legal counsel is used, the complexity of the issues involved, and the hourly rate charged for services. Based on past experience, the City Auditor considers requesting independent legal counsel once or twice a year, potentially requiring up to 300 hours of legal services depending on the complexity of the issues, to be a reasonable estimate. **The City Auditor anticipates requesting approximately \$180,000 each year for independent legal services, which is estimated to provide the City Auditor's Office with up to 300 hours of legal services consistent with the City Auditor's past experience, as well as an additional 100 to 200 hours for the Audit Committee, if required.**

Any unused funds budgeted for independent counsel at the end of any given year would not be expended or carried forward to the following fiscal year, but instead revert back to the City's General Fund. For instance, if no independent legal services are used during a year, no funds would be expended.