

# CITY OF SAN DIEGO

## Proposition C

(This proposition will appear on the ballot in the following form.)

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### **PROP C**

**AMENDS CITY CHARTER RELATING TO CHIEF FINANCIAL OFFICER, CITY AUDITOR, INDEPENDENT BUDGET ANALYST, TREASURER, AND AUDIT COMMITTEE.** Shall the Charter be amended to establish the positions, roles and responsibilities of Chief Financial Officer, City Auditor, and Independent Budget Analyst; modify the City Treasurer appointment process; and create an Audit Committee?

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This proposition requires approval by a simple majority (over 50%) of the voters voting on the proposition.

The proposed charter amendment follows the argument.

### **OFFICIAL TITLE AND SUMMARY**

CHARTER AMENDMENTS RELATING TO FINANCIAL OFFICERS AND RESPONSIBILITIES. Shall the voters approve amendments to the Charter to establish or modify the offices and responsibilities of a Chief Financial Officer, City Auditor, and Independent Budget Analyst; modify the City Treasurer appointment process; and create an Audit Committee to oversee the City Auditor?

## **CITY ATTORNEY IMPARTIAL ANALYSIS**

Background. Before the trial period of the Mayor-Council (Strong Mayor) form of government, the City Council selected the City Auditor and Comptroller, the City's chief fiscal officer, who acted as the City's accountant and audited City departments. The Auditor and Comptroller provided financial information both to the Council and to the City Manager. The Council appointed the Manager, who acted as chief budget officer, proposing the City's budget and other financial reports, and implementing financial plans when the Council approved them. The Council relied on information supplied by both officers for its fiscal decisions. The Manager appointed, with Council confirmation, the City Treasurer, the custodian of the City's money.

During the 5-year trial period of the Mayor-Council form of government, the elected Mayor assumes the responsibilities of the Manager, including budgeting, and has the authority to appoint most City fiscal officers with Council confirmation (the Manager, the Auditor and Comptroller, and the City Treasurer). The Council has temporary authority to establish an Office of Independent Budget Analyst (IBA) to provide it with independent analysis on budget and policy issues it must decide. The Mayor's supervision of the Auditor and Comptroller's duty to audit fiscal departments under Mayoral control raised concerns about the independence of internal audits. An Audit Committee, comprised of three Councilmembers, was created by ordinance to provide legislative oversight for the City's internal and external audit work.

Proposal. Through this ballot measure, the Council seeks to amend the Charter to more clearly separate the City's internal auditing function from supervision of the Manager (Mayor) by creating the new office of City Auditor, which would be supervised by a restructured Audit Committee. These changes would remain even if the Mayor-Council form of government ends as scheduled on December 31, 2010. The Auditor would perform the City's internal audits and investigations and would be appointed for a 10-year term by the Manager, in consultation with the Audit Committee, with Council confirmation. The Audit Committee would oversee the City's internal auditing and control practices; direct the Auditor's work; and recommend the City's outside auditor, monitoring its work. The Audit Committee would consist of two Councilmembers, one of whom would chair the Committee, and three public members. The public members must have at least 10 years of professional financial experience, and would be appointed from candidates recommended by a screening committee comprised of the Chief Financial Officer (CFO), the IBA, a Councilmember, and two outside financial experts.

The measure also provides that the Manager (Mayor) would appoint, with Council confirmation, the new CFO, who would assume the City's accounting responsibilities and oversee the City Treasurer. Appointment of the Treasurer would no longer require Council confirmation.

The measure would make permanent the Office of the IBA, which otherwise would expire at the end of the trial period of the Mayor-Council form of government. The measure also would establish that certain subordinates of the IBA and Auditor are members of the unclassified service.

## **FISCAL IMPACT STATEMENT**

The approval of this ballot measure would have no fiscal impact to the City.

# ARGUMENT IN FAVOR OF PROPOSITION C

## LACK OF CHECKS AND BALANCES CREATED OUR PROBLEMS

The \$1.2 Billion pension deficit that threatened San Diego's fiscal stability years ago was the result of a system that failed to provide adequate checks, balances and transparency.

## PROPOSITION "C" ESTABLISHES PROTECTIONS AND SAFEGUARDS

Proposition "C" puts needed checks and balances into the City Charter:

- Prop "C" ensures independent financial experts – not city employees or politicians – make up the majority of the Audit Committee that reviews City finances.
- Prop "C" strengthens the independence of the City Auditor, who acts as the watchdog over City finances. The Auditor is insulated from political pressure by a 10 year term, reports directly to the Audit Committee, and can only be terminated by request of the Audit Committee.
- Under this system, responsibility for reform is shared by independent financial experts, the mayor and the council – each providing a check and balance to the other.

## EXPERTS AGREE ON THIS APPROACH

These changes are consistent with the recommendations of the Securities and Exchange Commission's independent financial monitor, the Independent Budget Analyst and the Charter Review Committee.

## CITY'S FINANCIAL STABILITY DEPENDS ON IT

Restoration of San Diego's credit rating, reputation with investors, and ability to afford vital water, sewer, road and other public facility improvements all depend on establishing these safeguards.

## OPPONENTS' REAL AGENDA: PROTECT THE STATUS QUO

Opponents' real agenda is to maintain the status quo where one branch of government has near total control over – and the ability to cover up – City finances. That's what put our City in jeopardy to begin with and now threatens our City's future progress.

**Please join us in voting YES on "C" to safeguard your taxes and keep our city on the path to financial stability.**

JAMES R. MILLIKEN  
Superior Court Judge (Retired)/  
Vice Chair City Charter Review Committee

JOHN G. DAVIES  
Chair City Charter Review Committee/  
Former Judicial Appointments Advisor to  
Gov. Schwarzenegger

JERRY SANDERS  
Mayor

HON. KEVIN FAULCONER  
Chair City Audit Committee

SUSAN A. CHANNICK  
Professor of Law/  
Member City Charter Review Committee

# ARGUMENT AGAINST PROPOSITION C

## KEEP THE FOX OUT OF THE HENHOUSE

Prop C allows the mayor to choose the person who audits all city management and all city departments. The mayor is the city manager in charge of all city departments; allowing any mayor to appoint the person who will audit the city departments is like having the fox guard the henhouse.

## HONEST GOVERNMENT NEEDS AN INDEPENDENT CITY AUDITOR

Public confidence in the city's finances begins with the auditor. An independent auditor ensures trustworthy, timely and accurate financial reporting and increases taxpayer confidence in how tax dollars are spent.

## SAN DIEGO LOST ITS CREDIT RATING BECAUSE OF MANAGEMENT INTERFERENCE

In 2004, the city auditor left in disgrace when it was found that false and misleading financial statements were issued under pressure from management. Prop C allows this behavior to continue.

## PROP C PROTECTS POLITICAL INTERESTS. NOT THE TAXPAYERS

The auditor's job is to protect the taxpayers by being an objective and independent check on the city's financial controls and performance. The auditor must not be a political rubber stamp.

## PROP C IS A SMOKESCREEN

Prop C bundles together a confusing mix of City Charter changes. Voters do not have a real choice about which items to support and which to reject.

## PROTECT YOUR TAX DOLLARS

National auditing standards require auditors to be independent from the entity they examine. Prop C violates those requirements by having the fox guard the henhouse.

**"Lack of independence negatively impacts the auditor's ability to be objective. The citizens of San Diego deserve better."**

John Torell, San Diego City Auditor, 2005-2007

## VOTE NO ON PROPOSITION C

For more information: [www.auditsandiego.com](http://www.auditsandiego.com)

DONNA FRYE  
San Diego City Councilmember

JOHN A. GORDON  
Member, 2007 San Diego City Charter  
Review Committee

CARL DE MAIO  
Chairman, San Diego Citizens for  
Accountable Government

THERESA QUIROZ  
Secretary/Treasurer,  
Neighborhoods for Honest Government

JOHN TORELL  
Certified Public Accountant

## PROPOSED CHARTER AMENDMENT

The portions of the charter to be added are underlined and the portions to be deleted are printed in ~~strike-out~~ type.

### **Section 39: ~~City Auditor and Comptroller~~Chief Financial Officer.**

~~The City Auditor and Comptroller~~Chief Financial Officer shall be elected~~appointed~~ by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his ~~or her~~ successor is elected~~appointed~~ and qualified. ~~The City Auditor and Comptroller~~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 ~~him~~the Chief Financial Officer and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, 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 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~~Chief Financial Officer 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 ~~or she~~ shall perform the duties imposed upon ~~City Auditors and Comptrollers~~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 ~~Council~~City Manager from transferring to other officers matters in charge of the ~~City Auditor and Comptroller~~Chief Financial Officer which do not relate directly to the finances of the City. ~~He~~The Chief Financial Officer 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~~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.

### **Section 39.1: Audit Committee**

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three public members of the Audit Committee shall be appointed by the City Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the Independent Budget Analyst and two outside financial experts appointed by the other three members of the screening committee and confirmed by the City Council. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The minimum professional standards for public members shall include at least 10 years of experience as a certified public accountant or as a certified internal auditor, or 10 years of other professional financial or legal experience in audit management. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Public members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

## PROPOSED CHARTER AMENDMENT (Continued)

The Audit Committee shall have oversight responsibility regarding the City's auditing, internal controls and any other financial or business practices required of this Committee by this Charter. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council may specify additional responsibilities and duties of the Audit Committee by ordinance as necessary to carry into effect the provisions of this section.

### **Section 39.2: Office of City Auditor**

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee. Upon the recommendation of the Audit Committee, the City Auditor may be removed for cause by a vote of two-thirds of the members of the Council. The City Auditor shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall follow Government Auditing Standards. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon any officer, agent or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public in accordance with the requirements of the California Public Records Act.

### **Section 39.3. Independent Budget Analyst.**

Notwithstanding any other provision of this Charter, the City Council shall have the right to establish by ordinance an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall appoint the Independent Budget Analyst, who shall serve at the pleasure of the Council and may be removed from office by the Council at any time. Any person serving as the Independent Budget Analyst shall have the professional qualifications of a college degree in finance, economics, business, or other relevant field of study or relevant professional certification. In addition, such appointee shall have experience in the area of municipal finance or substantially similar equivalent experience. The Independent Budget Analyst shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

## PROPOSED CHARTER AMENDMENT (Continued)

### Section 45: City Treasurer

The Manager shall appoint the Treasurer ~~subject to confirmation by a majority of the members of the Council.~~ He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

The Treasurer shall receive, have the custody of, and disburse City moneys upon the warrant or check-warrant of the ~~Auditor and Comptroller~~ Chief Financial Officer under the provisions of section 53911 of the Government Code of the State of California. He or she shall keep such books and records as are necessary for the recording of all receipts and expenditures, together with a record of money in City depositories. Every Department officer, or institution which receives money directly from the public, shall deposit the same daily with the Treasurer, unless otherwise authorized by ordinance. The Treasurer shall demand and receive from the County Tax Collector moneys collected by him or her for use of the City. And it shall be the duty of such County official to deposit such money monthly with the City Treasurer.

The Treasurer shall determine pursuant to the general law of the state, the selection of depositories for City funds. All interest collected on City funds shall be accounted for monthly by the Treasurer.

Whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law or ordinance, the Treasurer shall be authorized to demand and receive the same. When any claim shall not be collectible by other methods, he or she shall report the same to the City Manager and the City Attorney for prosecution. When payment of a claim or any judgment thereon is made, he or she shall receive and receipt therefor in the name of the City.

The Treasurer shall issue notices for and collect special assessments previous to certification to the County Auditor, charges for permits for private use of public streets, and such other miscellaneous taxes, fees, assessments, licenses and privilege charges as may from time to time be assigned to him or her. He or she shall maintain a continuous inspection of the records and accounts of such taxes, licenses and privilege charges in order to effectuate their collection.

The Treasurer shall issue all permits and licenses except departmental permits and licenses which are by ordinance assigned to the particular Departments. Such permits and licenses shall be issued either directly by the Treasurer or upon specific authorization of the appropriate Department as may be required by ordinances, but all revenues derived therefrom shall be deposited with the Treasurer.

~~The Treasurer in office at the time this Charter is adopted by the people shall serve out the term of office for which he has been elected.~~

### 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 and Comptroller~~ shall cause an audit and investigation of the accounts of such officer to be made and shall report to the ~~Manager and the Council~~ Audit Committee. Either the Audit Committee or the Council ~~or the Manager~~ 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 and Comptroller~~, the Audit Committee ~~Manager~~ 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 and Comptroller~~, 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.

## PROPOSED CHARTER AMENDMENT (Continued)

### 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:

[subsections (1) through (6) no change in text]

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

[subsections (8) through (10) no change in text]

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

[subsections (12) through (17) no change to text]

[subsections (b) and (c) no change in text]

### Section 265: The Mayor

[subsection (a) no change in text]

(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:

[subsections (1) through (9) no change to text]

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

~~(11) (10) Notwithstanding contrary language in Charter sections 30, 39, 57 or 58, authority to dismiss the City Auditor and Controller, 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;~~

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

~~(13) (12) 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;~~

~~(14) (13) 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~~

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

[subsections (c) through (j) no change in text]

### Section 270: The Council

[subsections (a) through (e) no change in text]

~~(f) The Council shall have the right to establish an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council and may be removed from Office by the Council at any time. The Council shall determine the powers of this Office and its manager by ordinance.~~

## PROPOSED CHARTER AMENDMENT (Continued)

(g) (f) No member of the Council shall directly or indirectly by suggestion or otherwise attempt to influence or coerce the City Manager or other officer appointed or confirmed by the Council in the making of any appointment to, or removal from, any City office or employment, or the purchase of any supplies, or discuss directly or indirectly with any candidate for City Manager the matter of appointments to City Offices or employment, or attempt to exact any promises from such candidate relative to any such appointments.

(h) (g) Except for the purpose of inquiry or communications in furtherance of implementing policies and decisions approved by resolution or ordinance of the Council, individual members of Council shall deal with the administrative service for which the Mayor is responsible only through the Mayor, the City Manager, or the Mayor's designees.

(i) (h) Any City official or department head in the administrative service may be summoned to appear before the Council or any committee of the Council to provide information or answer any question.

### Section 280: Approval or Veto of Council Actions by Mayor

(a) The Mayor shall have veto power over all resolutions and ordinances passed by Council with the following exceptions:

(1) The Mayor's veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.

(2) The Mayor's veto power shall not extend to those matters where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented.

(3) Emergency Ordinances.

(4) The Annual Appropriations Ordinance.

(5) The Salary Ordinance, which instead shall be subject to veto in accordance with the process described in section 290.

(6) The Mayor's veto power shall not extend to the appointment, confirmation, or removal of members of the Audit Committee or the screening committee as provided for in section 39.1, or the City Auditor as provided for in section 39.2.

[subsections (b) - (c) no change in text]