

**CITY OF SAN DIEGO**

**Proposition E**

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

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**PROP E** AMENDS THE CHARTER OF THE CITY OF SAN DIEGO BY AMENDING SECTIONS 40 AND 41(D) TO PROVIDE FOR INDEPENDENT LEGAL COUNSEL FOR THE ETHICS COMMISSION. Shall the City Charter be amended to enable the Ethics Commission to retain its own legal counsel, rather than be represented by the City Attorney whose clients include City Officials who may be investigated by the Ethics Commission?

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

**Full text of this proposition  
follows the arguments.**

**CITY MANAGER’S FISCAL ANALYSIS**

This ballot measure would affect a transfer of appropriations from the City Attorney Office’s budget to the Ethics Commission’s budget. The Ethics Commission is currently reliant upon the City Attorney’s Office for legal counsel; this funding would enable the Commission to retain independent counsel. It is anticipated that the passage of this measure would not result in any additional expense to the City of San Diego.

## ARGUMENT IN FAVOR OF PROPOSITION E

### **A Yes Vote for Proposition E will provide the Ethics Commission with independent and impartial legal counsel.**

The Ethics Commission was created in June of 2001 to preserve public confidence in City government and to ensure that City Officials abide by campaign finance and ethics laws. The Commission's responsibilities include:

- Investigating reported violations of the City's governmental ethics laws.
- Imposing penalties and sanctions for ethics violations.
- Providing advice to City officials and the public about the City's ethics laws.

As required by the City Charter, which mandates that the City Attorney serve as legal counsel for all of the City's departments and offices, the Office of the City Attorney has been giving legal advice to the Ethics Commission since its inception. The Commission, which strives to maintain the highest level of integrity, recognizes that the current arrangement could affect its impartiality because of the following potential conflicts:

- In addition to advising the Ethics Commission, the City Attorney's Office advises City Officials who are subject to investigation by the Commission.
- Ethics Commission enforcement actions may involve staff in the City Attorney's Office or candidates seeking the office of City Attorney.

This proposition would amend the Charter to allow the Ethics Commission to obtain legal counsel independent from the City Attorney. Obtaining independent legal counsel will ensure that the Commission is completely independent and unbiased with respect to both advice and enforcement.

This is a cost neutral proposal that has been endorsed by the San Diego County Taxpayers Association. Funding for an Ethics Commission attorney will be obtained by transferring existing budgeted funds from the City Attorney's Office to the Ethics Commission.

### **VOTE YES on PROPOSITION E.**

DICK MURPHY  
Mayor  
City of San Diego

CASEY GWINN  
City Attorney  
City of San Diego

DOROTHY SMITH  
Chair  
Ethics Commission

MICHAEL AGUIRRE  
City Attorney Candidate

LESLIE DEVANEY  
City Attorney Candidate

## ARGUMENT AGAINST PROPOSITION E

No argument against the proposition was filed  
in the office of the City Clerk.

## 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 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.

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.

#### **Section 41: Commissions**

[subsections (a)–(c) no change in text]

- (d) Ethics Commission. For so long as an Ethics Commission remains established by ordinance of the Council, the Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, 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 material to the performance of the Commission's duties or exercise of its powers. The Ethics Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties.