THE CITY OF SAN DIEGO

COUNCIL PRESIDENT TODD GLORIA

THIRD DISTRICT

May 30, 2014

Honorable Judge David J. Danielsen
Presiding Judge
San Diego Superior Court
220 West Broadway
San Diego, CA 92101

Re: Grand Jury Report: "Updating San Diego's City Charter: A Recommendation to Amend the Charter's Provisions Related to Removal of Elected Officials".

Dear Judge Danielsen:

Pursuant to California Penal Code section 933 (c), the San Diego City Council provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report:

INTRODUCTION

California Constitution, Article 11, Section 5(b) states in relevant part that, "It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: . . . the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal . . ."

The City Charter defines a "vacancy" in the office of Mayor as the result of "death, resignation, or recall," and a "vacancy" in the office of Councilmember as the result of "death, resignation, recall, or unexcused absences," as defined by the Charter. The term is not defined with regard to the City Attorney. The Charter does not provide a way to remove an elected official except for Charter section 108, "Forfeiture of Office for Fraud."

The Charter has thus limited the ways in which an elected official may be "removed" from office. A Charter amendment would be required to provide that a municipal official could be "removed" for any other reason. The Charter can be amended only by a vote of the people. Charter language also applies to those who are appointed, and not elected, to fill vacancies in the positions of Mayor, Council, or City Attorney.

FINDINGS

Finding 01: Removal of an elected official for reasons other than as presently listed in the City Charter requires the Charter to be amended.

Response: The City agrees with the finding.

Finding 02: The San Diego City Council as a governing body can propose charter revisions which would be presented to San Diego voters for approval or rejection.

Response: The City agrees with the finding.

The City also notes that these may be properly characterized as Charter amendments, as opposed to revisions.

RECOMMENDATIONS

Recommendation 14-01: Identify additional reasons (other than death, resignation, or recall) for removing elected officials and place them on the ballot for an upcoming election.

Response: The recommendation requires further analysis.

Analysis and recommendations related to reasons for removal of elected officials would be addressed as part of a comprehensive Charter review process or as a single ballot measure to amend the Charter. A comprehensive Charter review was proposed by the City Attorney in memorandum MS 59, dated October 22, 2013. The Economic Development & Intergovernmental Relations (ED&IR) Committee Chair expressed support for a formal Charter review committee in a November 22, 2013 memorandum, "City Council Charter Review Next Steps."

As part of this process, the Mayor and City Council can establish an independent Charter review committee consisting of qualified and broadly representative members of the community. This Committee would study the issues and make recommendations; and the City Council could subsequently submit a proposed ballot measure to the voters in a general election, citywide ballot. The analysis performed by the Committee would include review of governing documents in other jurisdictions, and will be vetted by the City Council and its ED&IR Committee. Unintended consequences and the effectiveness of each potential reason for removing elected officials will need to be considered.

Recommendation 14-02: Actively seek citizens' recommendations for Charter amendments and hold hearings to ensure the process is transparent to the public.

Response: The recommendation has been implemented.

The City has an open and transparent process for review of citizens' recommendations for Charter amendments. Council Policy 000-21, "Submission of Ballot Proposals," establishes procedures for "submittal of ballot proposals to the City Council, by members of the public, Councilmembers, the Mayor or mayoral departments, independent department directors, or a public agency." The City Clerk's Office publishes a schedule of when proposals for ballot measures may be submitted and must be heard. A City Council standing committee vets such proposals at a public hearing and may forward them to the full City Council for consideration. Proposals adopted by the City Council as ballot measures are then submitted to the voters for consideration.

Recommendation 14-03: Amend the City Charter to provide that a City Council supermajority vote – at least six of the current nine members – is authorized to remove an elected official.

Response: The recommendation requires further analysis.

This recommendation would require analysis, either as part of a comprehensive Charter reform or as a single ballot measure. See response to recommendation 14-01.

Recommendation 14-04: Consider the following possible reasons for removing an elected official:

- The elected official pleads guilty or no contest to any felony or is convicted of a misdemeanor or felony involving moral turpitude.
- The elected official is adjudged insane.
- The elected official ceases to be a registered voter or resident of the city or district he/she represents.
- The elected official ceases to discharge the duties of the office for 90 consecutive days, unless excused by six out of nine Council members. In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the city shall be extended to another 40 days by the Council by a vote of at least six out of nine Councilmembers.
- The elected official is removed from office by a judicial procedure.
- The official's election or appointment is declared void by a judicial decision.

Response: The recommendation requires further analysis.

This recommendation would require analysis, either as part of a comprehensive Charter reform or as a single ballot measure. See response to recommendation 14-01.

Sincerely,

TODD GLORIA
Council President
City of San Diego

Encl: City Council Resolution R-308948

Item 202 5/19/14

(R-2014-699)

RESOLUTION NUMBER R- 308948

DATE OF FINAL PASSAGE MAY 19 2014

APPROVING THE CITY COUNCIL'S RESPONSE TO THE 2013-2014 SAN DIEGO COUNTY GRAND JURY REPORT TITLED "UPDATING SAN DIEGO'S CITY CHARTER: A RECOMMENDATION TO AMEND THE CHARTER'S PROVISIONS RELATED TO REMOVAL OF ELECTED OFFICIALS."

WHEREAS, on March 13, 2014, the 2013-2014 San Diego County Grand Jury (Grand Jury) filed a report titled "Updating San Diego's City Charter: A Recommendation to Amend the Charter's Provisions Related to Removal of Elected Officials" (Report), that requested a response from the City Council on two findings and four recommendations in the Report; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the Grand Jury examined several issues relating to the San Diego City Charter's provisions related to removal of the City's public officials, and requested that the City Council respond to the findings and to recommendations 14-01 through 14-04 in the Report; and

WHEREAS, the Office of the Independent Budget Analyst prepared a proposed response to the Report as set forth in IBA Report No. 14-12, dated April 22, 2014, for the City Council's consideration; and

WHEREAS, the proposed responses were discussed at the April 30, 2014 meeting of the Council's Economic Development & Intergovernmental Relations Committee, before being considered by the full Council; and

WHEREAS, under Charter section 280(a)(1), this resolution is not subject to veto by the Mayor because this matter is exclusively within the purview of the City Council and not affecting the administrative service of the City under the control of the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and adopts as its own the response to the 2013-2014 San Diego County Grand Jury Report titled "Updating San Diego's City Charter: A Recommendation to Amend the Charter's Provisions Related to Removal of Elected Officials," as set forth in IBA Report No. 14-12, dated April 22, 2014.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than June 11, 2014.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Sharon B. Spivak
Deputy City Attorney

SBS:jdf
05/06/2014
Or.Dept:IBA
Doc. No. 781997

Passed by the Council of The City of San Diego on MAY 19 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
Ed Harris	☑	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Myrtle Cole	☑	☐	☐	☐
Mark Kersey	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Scott Sherman	☑	☐	☐	☐
David Alvarez	☑	☐	☐	☐
Marti Emerald	☑	☐	☐	☐

Date of final passage MAY 19 2014.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Jarmaya, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308948