

ORDINANCE NUMBER O- 21139 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 04 2019

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE PRIMARY ELECTION TO BE HELD ON MARCH 3, 2020, ONE MEASURE AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTIONS 39.1 AND 39.2, RELATING TO THE AUDIT COMMITTEE AND THE SELECTION AND TERM OF OFFICE OF THE CITY AUDITOR.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code (Elections Code) section 9255(a)(2), and San Diego City Charter (Charter) section 223, the Council of the City of San Diego (Council) has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by San Diego Ordinance O-21139, introduced and adopted on October 1, 2019, the Council has called a Municipal Special election to be consolidated with the California State Primary Election (officially titled the Presidential Primary Election) to be held March 3, 2020, for the purpose of submitting to the qualified voters of the City of San Diego (City) one or more ballot measures; and

WHEREAS, the Council now desires to submit to the voters at the Municipal Special Election one measure amending the Charter by amending Article V, sections 39.1 and 39.2, relating to the Audit Committee and the selection process and term of office of the City Auditor; and

WHEREAS, Charter section 39.1 provides the governing law for the City's Audit Committee, and Charter section 39.2 provides the governing law for the City Auditor; and

WHEREAS, the Council now desires to amend Charter section 39.1 to provide that the member of the Council serving as the Chair of the Audit Committee will serve on the screening

committee that recommends to the Council candidates to serve as public members of the Audit Committee, to remove the City's Chief Financial Officer from the screening committee, and to provide that each outside financial expert on the screening committee may serve until replaced by the Council's appointment of a new financial expert to the screening committee; and

WHEREAS, the Council also desires to amend Charter section 39.1 to provide that the Audit Committee must evaluate applicants for the position of City Auditor and recommend to the Council no fewer than three qualified candidates for consideration, based on minimum qualifications set forth in Charter section 39.2 and other criteria determined by the Audit Committee; and

WHEREAS, the Council also desires to amend Charter section 39.1 to provide that the Audit Committee may use staff from the Office of the Independent Budget Analyst and employ expert consultants, in accordance with City contracting rules, to assist in the process of evaluating City Auditor applicants; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that the City Auditor must be appointed by the City Council, from those candidates identified by the Audit Committee, in accordance with the process set forth in section 39.1 of the Charter; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that the City Auditor is appointed for a term of five years and that the Council may reappoint the City Auditor to a second five-year term without considering other candidates, upon the City Auditor's application and a favorable recommendation from the Audit Committee; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that the City Auditor is limited to serving two full five-year terms or ten years in total; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that if the City Auditor vacates the office for any reason before the end of the City Auditor's term, then the

principal assistant to the City Auditor will serve as interim City Auditor, if the principal assistant to the City Auditor is eligible to serve and is confirmed by the City Council; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that if the principal assistant to the City Auditor is not eligible to serve or is not confirmed by the City Council, then the Council may adopt procedures to fill the vacancy on an interim basis; and

WHEREAS, the Council also desires to amend Charter section 39.2 to provide that an interim City Auditor may serve for that period of time necessary to complete a formal recruitment and appoint a successor City Auditor, and to provide that an interim City Auditor may apply to serve as the City Auditor and, if appointed, may serve a full five-year term, with the opportunity to serve a second full five-year term in accordance with Charter section 39.2; and

WHEREAS, the Council also desires to amend other language in sections 39.1 and 39.2 for legal clarity; and

WHEREAS, the Charter amendments were proposed by Councilmember Scott Sherman as part of the Council Policy 000-21 process, were heard by the Council's Rules Committee on July 31, 2019 and September 18, 2019, and were heard by the Council on October 21, 2019; and

WHEREAS, on October 21, 2019, the Council directed the City Attorney to make specific modifications to the proposal, and the proposal is presented in this ordinance for placement on the March 3, 2020 Municipal Special Election ballot; and

WHEREAS, the Council's proposal, on its own motion, of a Charter amendment is governed by California Constitution, article XI, section 3(b), Elections Code section 9255(a)(2), and Government Code section 34458, and is not subject to veto by the Mayor; NOW,  
THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. One measure amending the City Charter by amending Article V, sections 39.1 and 39.2, related to the Audit Committee and the selection process and term in office of the City Auditor, is hereby submitted to the qualified voters at the Municipal Special Election to be held on March 3, 2020, and consolidated with the California State Primary Election (officially titled the Presidential Primary Election) to be held on the same date, with the measure to read as follows:

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**MEASURE**

**ARTICLE V**

**EXECUTIVE AND ADMINISTRATIVE SERVICE**

**SECTION 39.1: AUDIT COMMITTEE**

The Audit Committee ~~shall be~~ is an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee ~~shall~~ members must be appointed as provided under this section. To ensure its independence, the Audit Committee ~~shall~~ must be composed of two members of the City Council and three members of the public. The two Councilmembers ~~shall~~ must be appointed by the City Council, one of whom ~~shall~~ will serve as Chair of the Audit Committee. The three public members of the Audit Committee ~~shall~~ must 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~~ composed of a the member of the City Council serving as the Chair of the Audit Committee, ~~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. Each outside financial expert on the screening committee may serve until replaced by the City Council's appointment of a new financial expert to the screening committee. The City Council may waive the requirement for appointment of a public member of the Audit Committee from a pool of at least two candidates when a sitting incumbent applies, and is eligible for reappointment. Public members of the Audit Committee ~~shall~~ must 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~~ must 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, a~~ Appointments shall must be made so that ~~not~~ no more than one public member's term of office ~~shall~~ expires in any one year.

The Audit Committee ~~shall have~~ has 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 must evaluate applicants for the position of City Auditor and recommend to the City Council no fewer than three qualified candidates for consideration, based on the minimum qualifications set forth in section 39.2 of this Charter and other criteria determined by the Audit Committee. The Audit Committee may use staff from the Office of the Independent Budget Analyst and employ expert consultants, in accordance with City contracting rules, to assist in the process of evaluating City Auditor applicants. The Audit Committee ~~shall~~ is also be responsible for directing and reviewing the work of the City Auditor, and the City Auditor ~~shall~~ must report directly to the Audit Committee. The Audit Committee ~~shall~~ recommends the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the City Council and ~~shall be~~ responsible for ~~conducts~~ an annual performance review of the City Auditor. The Audit Committee ~~shall~~ also recommends to the City Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee ~~shall~~ must 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~~ must be reported to the City Council. The City 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 THE CITY AUDITOR**

The City Auditor ~~shall~~ must be appointed by the ~~City Manager~~ City Council, in consultation with ~~from those candidates identified by the Audit Committee, in accordance with the process set forth in section 39.1 of this Charter, and confirmed by the Council.~~ The City Auditor ~~shall~~ must be a certified public accountant or certified internal auditor. The City Auditor ~~shall serve~~ is appointed for a term of ~~ten~~ five years. The City Council may reappoint the City Auditor to a second five-year term without considering other candidates, upon the City Auditor's application and a favorable recommendation from the Audit Committee. The City Auditor is limited to serving two full five-year terms or ten years in total. The City Auditor ~~shall~~ reports to and ~~be~~ is 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 City Council. If the City Auditor vacates the office for any reason before the end of the City Auditor's term, then the principal assistant to the City Auditor will serve as interim City Auditor, if the principal assistant to the City Auditor is eligible to serve and is confirmed by the City Council. If the principal assistant is not eligible to serve or is not confirmed by the City Council, then the City Council may adopt procedures to fill the vacancy on an interim basis. An interim City Auditor may serve for that

period of time necessary to complete a formal recruitment and appoint a successor City Auditor. An interim City Auditor may apply to serve as the City Auditor and, if appointed, may serve a full five-year term, with the opportunity to serve a second full five-year term, in accordance with this section.

The City Auditor ~~shall be~~ serves as 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~~ must 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~~ must follow Government Auditing Standards. The City Auditor ~~shall~~ must have access to, and authority to examine any and all records, documents, systems, and files of the City and/~~er~~ 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 must be made available to the public in accordance with the requirements of the California Public Records Act.

**END OF MEASURE**

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Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

<b>MEASURE __. CHARTER AMENDMENTS REGARDING AUDIT COMMITTEE AND SELECTION AND TERM OF CITY AUDITOR.</b> Shall Charter sections 39.1 and 39.2 be amended to provide that the City Council appoints the City Auditor from at least three candidates recommended by the Audit Committee; the Auditor is limited to two five-year terms; the Council may appoint an interim Auditor; and public members of the screening committee for the Audit Committee serve until replaced; and make clarifying amendments?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. Passage of this measure requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

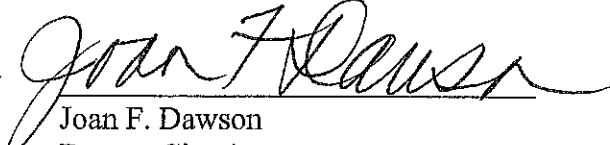
Section 7. In compliance with San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. A full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 9. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By

  
Joan F. Dawson  
Deputy City Attorney

JFD:jdf:jvg

10/04/19

10/24/19 REV.

11/04/19 COR. COPY

Or. Dept: Council District 7, Rules Committee

Doc. No. 2208187\_2

Passed by the Council of The City of San Diego on NOV 04 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 04 2019.

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 , Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on NOV 04 2019, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21144

Passed by the Council of The City of San Diego on November 4, 2019, by the following vote:

**YEAS:** BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN, MORENO, GOMEZ.

**NAYS:** NONE.

**NOT PRESENT:** NONE.

**RECUSED:** NONE.

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: Matthew R. Hilario, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. O-21144 (New Series) of The City of San Diego, California.


I FURTHER CERTIFY that said ordinance was passed on the day of its introduction, to wit, on November 4, 2019, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy