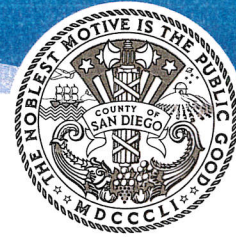


SAMPLE BALLOT & VOTER INFORMATION

# Presidential General Election

Tuesday, November 8, 2016

Polls open 7am » close 8pm



## Important Election Information



Scan to check the status of your registration, polling place and mail ballot



**OFFICIAL BALLOT**  
**SAN DIEGO COUNTY, CALIFORNIA**  
**PRESIDENTIAL GENERAL ELECTION**  
**NOVEMBER 8, 2016**

CITY	STATE
<p align="center"><b>CITY OF SAN DIEGO</b>  <b>CITY ATTORNEY</b>  Vote for One</p>	<p><b>PROP 52 MEDI-CAL HOSPITAL FEE PROGRAM. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.</b> Extends indefinitely an existing statute that imposes fees on hospitals to fund Medi-Cal health care services, care for uninsured patients, and children's health coverage. Fiscal Impact: Uncertain fiscal effect, ranging from relatively little impact to annual state General Fund savings of around \$1 billion and increased funding for public hospitals in the low hundreds of millions of dollars annually.</p>
<input type="radio"/> <b>ROBERT HICKEY</b> Senior Deputy District Attorney	
<input type="radio"/> <b>MARA ELLIOTT</b> Chief Deputy City Attorney	
<p align="center"><b>MEASURES SUBMITTED TO THE VOTERS</b></p>	<input type="radio"/> YES
<p align="center"><b>STATE</b></p>	<input type="radio"/> NO
<p><b>PROP 51 SCHOOL BONDS. FUNDING FOR K-12 SCHOOL AND COMMUNITY COLLEGE FACILITIES. INITIATIVE STATUTE.</b> Authorizes \$9 billion in general obligation bonds for new construction and modernization of K-12 public school facilities; charter schools and vocational education facilities; and California Community Colleges facilities. Fiscal Impact: State costs of about \$17.6 billion to pay off both the principal (\$9 billion) and interest (\$8.6 billion) on the bonds. Payments of about \$500 million per year for 35 years.</p>	<p><b>PROP 53 REVENUE BONDS. STATEWIDE VOTER APPROVAL. INITIATIVE CONSTITUTIONAL AMENDMENT.</b> Requires statewide voter approval before any revenue bonds can be issued or sold by the state for certain projects if the bond amount exceeds \$2 billion. Fiscal Impact: State and local fiscal effects are unknown and would depend on which projects are affected by the measure and what actions government agencies and voters take in response to the measure's voting requirement.</p>
<input type="radio"/> <b>BONDS - YES</b>	<input type="radio"/> <b>BONDS - YES</b>
<input type="radio"/> <b>BONDS - NO</b>	<input type="radio"/> <b>BONDS - NO</b>

**OFFICIAL BALLOT**  
**SAN DIEGO COUNTY, CALIFORNIA**  
**PRESIDENTIAL GENERAL ELECTION**  
**NOVEMBER 8, 2016**

MEASURES SUBMITTED TO THE VOTERS	MEASURES SUBMITTED TO THE VOTERS
<b>CITY OF SAN DIEGO</b>	<b>CITY OF SAN DIEGO</b>
<p><b>MEASURE C DOWNTOWN STADIUM INITIATIVE.</b>            Should the measure be adopted to: increase San Diego's hotel occupancy tax by 6% to build a City-owned downtown professional football stadium and convention center project, and fund tourism marketing; effect the project financing, design, construction, use, management, and maintenance, including a \$650,000,000 contribution and 30-year commitment by a professional football entity; end Tourism Marketing District assessments; adopt a development ordinance, and related land use, sign, and zoning laws?</p>	<p><b>MEASURE E CHARTER AMENDMENT REGARDING QUALIFICATIONS, VACANCY, AND REMOVAL FOR MAYOR, CITY ATTORNEY, AND COUNCIL.</b> Shall the Charter be amended to include a new article adding incapacity, felony conviction, and removal as grounds for vacancies in office; a procedure for calling a special election to remove an officer for cause; a revised procedure for filling vacancies; to require the City Attorney be a licensed attorney; and to define authority during vacancies and enforcement of office forfeiture?</p>
<p align="center">YES <input type="radio"/></p>	<p align="center">YES <input type="radio"/></p>
<p align="center">NO <input type="radio"/></p>	<p align="center">NO <input type="radio"/></p>
<p><b>MEASURE D FACILITIES AND TOURISM TAX INITIATIVE.</b> Should the measure be adopted to: among other provisions, increase San Diego's hotel occupancy tax up to 5%; end Tourism Marketing District allow hoteliers to create assessment districts and use hotel occupancy taxes for downtown convention center and not a stadium; prohibit contiguous expansion of existing convention center; create downtown overlay zone for convention and sports facilities; create environmental processes; and allow Qualcomm stadium property's sale for educational and park uses?</p>	<p><b>MEASURE F CHARTER AMENDMENT REGARDING REQUIRED TERM OF SERVICE FOR CERTAIN TERMINATIONS OR SUSPENSIONS OF DEPUTY CITY ATTORNEYS.</b> Shall the City Charter be amended to change the term of service required of Deputy City Attorneys, for protection from termination or suspension without good cause, from two years or more of continuous service to one year or more of continuous service, which protection would continue not to apply to layoffs due to lack of work or insufficient appropriations?</p>
<p align="center">YES <input type="radio"/></p>	<p align="center">YES <input type="radio"/></p>
<p align="center">NO <input type="radio"/></p>	<p align="center">NO <input type="radio"/></p>

**OFFICIAL BALLOT**  
**SAN DIEGO COUNTY, CALIFORNIA**  
**PRESIDENTIAL GENERAL ELECTION**  
**NOVEMBER 8, 2016**

MEASURES SUBMITTED TO THE VOTERS	MEASURES SUBMITTED TO THE VOTERS
CITY OF SAN DIEGO	CITY OF SAN DIEGO
<p><b>MEASURE G CHARTER AMENDMENTS REGARDING THE CITIZENS' REVIEW BOARD ON POLICE PRACTICES.</b> Shall section 43(d) of the City Charter be amended to rename the Citizens' Review Board on Police Practices as the Community Review Board on Police Practices, to replace references to "City Manager" with "Mayor and City Council," and to require the board to review all deaths occurring while someone is in the custody of the San Diego Police Department and all police officer-related shootings?</p>	<p><b>MEASURE I CHARTER AMENDMENT REGARDING BALBOA PARK AND SAN DIEGO HIGH SCHOOL.</b> Shall City Charter section 55 be amended to authorize the City Council to lease the dedicated park property in Balboa Park currently occupied by San Diego High School, to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school?</p>
<p>YES  <input type="radio"/></p>	<p>YES  <input type="radio"/></p>
<p>NO  <input type="radio"/></p>	<p>NO  <input type="radio"/></p>
<p><b>MEASURE H CHARTER AMENDMENTS REGARDING PURCHASING AND CONTRACTING PROCESSES FOR THE CITY OF SAN DIEGO.</b> Shall the City Charter be amended to: require contracts for public works, goods, services, and consultants to be awarded through a competitive process in accordance with rules adopted by ordinance, remove the position of Purchasing Agent, eliminate the requirement to publish certain notices in printed newspapers, and update other provisions consistent with state law?</p>	<p><b>MEASURE J CHARTER AMENDMENT REGARDING USE OF LEASE REVENUE FROM MISSION BAY PARK.</b> Shall Charter section 55.2 be amended to: increase, from 25% to 35%, the allocation of annual Mission Bay Park lease revenues exceeding \$20 million, for capital improvements in San Diego Regional Parks; allow Council to add City-owned parkland to Mission Bay Park's boundaries; combine and coordinate construction of Mission Bay Park improvements identified in this section; and extend operation of this section until 2069?</p>
<p>YES  <input type="radio"/></p>	<p>YES  <input type="radio"/></p>
<p>NO  <input type="radio"/></p>	<p>NO  <input type="radio"/></p>

**OFFICIAL BALLOT**  
**SAN DIEGO COUNTY, CALIFORNIA**  
**PRESIDENTIAL GENERAL ELECTION**  
**NOVEMBER 8, 2016**

MEASURES SUBMITTED TO THE VOTERS	MEASURES SUBMITTED TO THE VOTERS
CITY OF SAN DIEGO	CITY OF SAN DIEGO
<p><b>MEASURE K CHARTER AMENDMENT REQUIRING RUN-OFF ELECTION FOR THE OFFICES OF MAYOR, CITY ATTORNEY AND COUNCILMEMBER.</b> Shall the Charter be amended to eliminate the provision that elects a candidate for Mayor, City Attorney, or Councilmember to office if the candidate receives a majority vote in the June primary election, and instead require a run-off election at the November general election between the two candidates who received the most votes in the primary election?</p>	<p><b>MEASURE M AFFORDABLE HOUSING: INCREASING THE LIMIT ON THE NUMBER OF UNITS THE CITY AND CERTAIN PUBLIC AGENCIES ARE ALLOWED TO HELP DEVELOP.</b> Shall the voters increase by 38,680 the maximum number of housing units the City and certain other public agencies are allowed to help develop, construct, or acquire for people with low incomes, without this ballot measure approving specific housing units, providing funds for development, removing requirements that otherwise apply, or taking any other action?</p>
<p>YES <input type="radio"/></p>	<p>YES <input type="radio"/></p>
<p>NO <input type="radio"/></p>	<p>NO <input type="radio"/></p>
<p><b>MEASURE L CHARTER AMENDMENT REQUIRING CITIZENS' INITIATIVE AND REFERENDUM MEASURES TO BE PLACED ON NOVEMBER GENERAL ELECTION BALLOTS, UNLESS THE COUNCIL DECIDES TO SUBMIT THEM TO VOTERS EARLIER.</b> Shall the Charter be amended to require qualified citizens' initiative and referendum measures to be submitted to voters on the next November general election ballot and not at a June primary election, unless the Council chooses to submit the measure to voters prior to that election?</p>	<p><b>MEASURE N NON-MEDICAL CANNABIS BUSINESS TAX.</b> If California voters approve Proposition 64 legalizing marijuana in the state, shall the City adopt an ordinance imposing a gross receipts tax, for general revenue purposes, on non-medical cannabis (also known as marijuana) businesses operating in the City, initially set at 5% and increasing to 8% on July 1, 2019, having a maximum rate of 15%, generating an undetermined amount of revenue and continuing indefinitely?</p>
<p>YES <input type="radio"/></p>	<p>YES <input type="radio"/></p>
<p>NO <input type="radio"/></p>	<p>NO <input type="radio"/></p>

CITY OF SAN DIEGO  
City Attorney



**MARA ELLIOTT**  
Chief Deputy City Attorney  
Lead Counsel, Audit Committee

"Mara Elliott is tough, tested and ready to lead."  
-Retiring City Attorney Jan Goldsmith

As City Attorney, Mara Elliott will fight for us. Mara Elliott will crack down on crime in every neighborhood and build trust between communities and law enforcement. Mara Elliott will expose waste and corruption at City Hall to invest in stronger, safer neighborhoods.

**Mara Elliott's Record:**

- ✓ Investigated and tracked down perpetrators of elder abuse.
- ✓ Saved taxpayers millions cracking down on crooked contractors defrauding our city and rooting out waste at City Hall.
- ✓ Won tough cases against polluters and corporations.

**Mara Elliott's Priorities:**

- ✓ Crack Down on Crime: Enforce stricter gun laws to keep guns out of the hands of criminals.
- ✓ Building Trust Between Law Enforcement and Community: Add neighborhood prosecutors, community policing.
- ✓ Neighborhoods First: Strengthen neighborhood services, not downtown stadiums.
- ✓ No Special Deals for Special Interests: Enforce the law. No backroom deals.

**ENDORSED BY:**

San Diego Firefighters  
Deputy City Attorneys Association  
Former City Attorneys John Witt, Casey Gwinn  
Former Interim Mayors Todd Gloria, Toni Atkins  
Sierra Club  
Planned Parenthood Action Fund

"Mara Elliott will protect taxpayers and invest in our neighborhoods."  
-City Hall Watchdog Donna Frye

[www.MaraElliott.com](http://www.MaraElliott.com)

CITY OF SAN DIEGO  
City Attorney



**ROBERT HICKEY**

**Prosecutor of the Year**

"Robert Hickey was named *Prosecutor of the Year* for successfully convicting one of the most notorious gang murderers in San Diego history to life in prison without parole. The killer murdered two innocent women in the crossfire of a gangland retribution, also shooting a 7-year-old child."

- San Diego Police Officers Association President Brian Marvel

**Tackling Rising Homelessness**

"Robert Hickey's plan for reducing homelessness will get the homeless off the streets and into the support programs they need."

- Father Joe Carroll

**Safer Communities**

"San Diego has seen the negative results of early release programs from Sacramento that put more criminals on our streets. Robert Hickey has the experience we need to make our communities safer."

- Mayor Kevin Faulconer

**Protecting the Environment**

"As an experienced prosecutor, Robert Hickey has the independence we need to hold polluters accountable for damage they do to our beaches, bays and canyons."

- Councilwoman Lorie Zapf

**Independent Reformer**

"Robert Hickey is an outsider who will bring much needed reform. Recently, 98 criminal cases were misplaced, resulting in a failure to file charges for serious crimes like domestic violence. Robert Hickey will make sure mistakes like this never happen again."

- Sheriff Bill Gore

[www.HickeyForCityAttorney.com](http://www.HickeyForCityAttorney.com)



# CITY OF SAN DIEGO

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

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## MEASURE C

**DOWNTOWN STADIUM INITIATIVE.** Should the measure be adopted to: increase San Diego's hotel occupancy tax by 6% to build a City-owned downtown professional football stadium and convention center project, and fund tourism marketing; effect the project financing, design, construction, use, management, and maintenance, including a \$650,000,000 contribution and 30-year commitment by a professional football entity; end Tourism Marketing District assessments; adopt a development ordinance, and related land use, sign, and zoning laws?

---

This measure's approval threshold could be affected by legal issues currently before the California Supreme Court.

Due to the size of the full text of this measure you will be mailed a separate, **SUPPLEMENTAL** pamphlet which will contain the full text of Measure C (and D), also including the Ballot Question, Official Title and Summary, Impartial Analysis, Fiscal Impact Statement, Argument In Favor, and Argument Against, which are also printed below.

You may also view the full text of the measure at [www.sdvote.com/en/measure-c.pdf](http://www.sdvote.com/en/measure-c.pdf).  
(NOTE: Web address is in all lower case letters.)

## OFFICIAL TITLE AND SUMMARY

### BALLOT TITLE

Tax and Downtown Stadium/Convention Center Initiative: Transient Occupancy Tax Increase for Combined Downtown Stadium and Convention Center Project and Tourism Marketing, and Related Land Use and Development Regulations

### BALLOT SUMMARY

This measure would obligate the City of San Diego to acquire the land for, and build, a downtown convention center and professional football stadium. The project would be financed through a 6% rate increase in the transient occupancy tax, and a \$650,000,000 contribution by a professional football entity. The City would be authorized to issue bonds to finance the project, supported by the new tax revenue. The measure contemplates the City's use of a joint powers authority or a City corporation to own, finance, develop, and construct the project.

If approved, the measure would change the City's Downtown Community Plan and land development regulations to exempt the project from existing regulations, provide new regulations, and accommodate a wide range of commercial, sports and entertainment uses. The measure would allow outward-facing advertising signs and billboards, large electronic message boards, and other signs, lighting and noise levels not currently permitted by the City's regulations.



## BALLOT SUMMARY (CONTINUED)

The football stadium would have 65,000 seats, expandable to 75,000. The convention center would have 385,000 square feet of meeting space.

The measure would end Tourism Marketing District assessments, and allow new tax revenues to be used for tourism marketing and promotion.

The tax increase provisions can be summarized as follows: If adopted, this measure would increase the City's transient occupancy tax rate by 6% for hotels, recreational vehicle parks and campgrounds, for a total tax rate of 16.5%, effective January 1, 2017. The new revenue would be paid into special funds in the City's treasury: 5/6 of the new revenue would be paid into a new convention center and stadium fund; 1/6 of the new revenue would be paid into the existing San Diego Tourism and Marketing Fund. The tax rate would be reduced by 3% if the proposed stadium is not complete within two years after home games for professional football end at Qualcomm Stadium, or if all City-issued bonds and other financings are repaid, or after 50 years, or if the professional football entity has not, by January 1, 2027, paid its contribution and entered into an agreement not to relocate and a lease. In that event, two-thirds of the revenue, based on the reduced 3% rate, would be dedicated to tourism and convention center marketing.

This measure was placed on the ballot by the City Council after voter signatures qualified the initiative measure for the ballot.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS

This citizens' initiative measure would amend the City's Downtown Community Plan and the San Diego Municipal Code to provide for the development, financing, management, and use of a downtown convention center and professional football stadium project (the Project) on a 10-block area east of Petco Park (the Site), and require the City to:

- Create a Planned District on the Site and set City policies, criteria, permitting procedures, and regulations that apply only to the Project, including:
  - Working proactively for removal of bus yards from the Site;
  - Developing the Project as part of a commercial, sports, and entertainment district with a wide range of permitted uses, including live entertainment, alcohol sales, broadcasting, and special events for day and night-time use;
  - Allowing uninterrupted development across the Site, and routing vehicle, bicycle, and pedestrian traffic around the Site;
  - Favoring off-site and shared parking and mass transit use;
  - Exempting the Project from existing development procedures and regulations including, for example, parking, noise, and lighting;
  - Establishing new design regulations including, for example, for setbacks, height, light, noise standards, green building, parking, and including sign regulations to allow large outward-facing, lighted advertising and electronic message signs; and
  - Requiring the City to issue a development permit, or phased permits, without a public hearing, based solely on whether the application complies with the new regulations.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

- Increase the City's Transient Occupancy Tax (TOT). This tax is paid by guests at hotels, recreational vehicle parks and campgrounds. This tax is itemized on guests' bills, collected from guests by the operator and turned over to the City. The current tax is 10.5%. This measure would increase TOT to 16.5%, and end Tourism Marketing District assessments. New tax revenue would be deposited in special trust funds for:
  - Financing costs, including debt service on bonds issued by the City;
  - Pre-construction costs incurred by the City, including land acquisition, architecture and engineering, project management, and legal costs;
  - All costs of developing and constructing a convention center building designed and sized to house a professional football stadium, including land acquisition and infrastructure;
  - Development and construction of the stadium as a joint facility (\$350 million);
  - Tourism and convention center marketing;
  - Operating and maintenance reserves; and
  - Project operations, maintenance, capital improvements and repairs.

The measure also would:

- Condition use of construction funds on:
  - Contributions by a professional football entity for stadium construction and infrastructure costs up to \$650,000,000. This funding can be paid in cash, using revenue from seat license sales, sponsorships or other future revenues, from construction loan proceeds, or as pre-development expenses incurred by the entity.
  - A 30-year commitment by a professional football entity to not relocate and to use the stadium on set terms.
- Authorize the City to create a non-profit corporation or joint powers authority to own and assist the City in financing, developing, constructing, and operating the Project.
- Under current law, exempt the Project from environmental review under the California Environmental Quality Act.

## FISCAL IMPACT STATEMENT

This measure increases the City's transient occupancy tax (TOT) from 10.5% to 16.5%. The measure eliminates the existing 2% assessment hotels charge customers to a fund a tourism marketing district (TMD).

Based on current TOT revenue projections, a 6% increase would initially generate \$120 million annually. 5% of the 6% increase generates \$100 million annually, and would fund construction and operations/maintenance (O&M) of a convention center/stadium facility (Facility) in the East Village. The remaining 1% generates \$20 million annually for tourism marketing.

Depending on the combination of cash and TOT-supported revenue bonds used, the 5% TOT increase could provide between \$1.3 and \$1.6 billion for land acquisition and Facility construction. The Chargers must provide an additional \$650 million for the stadium-only portion of the Facility, and enter into a lease to play at the stadium for at least 30 years.

While not stated in the measure, the Chargers have estimated Facility costs at \$1.8 billion:

- \$200 million – land acquisition (TOT funded)
- \$600 million – construction of convention center (TOT funded)
- \$350 million – construction of integrated joint use portion (TOT funded)
- \$650 million – construction of stadium (privately funded)

Project expenses may be understated. Land costs could increase with needs such as retaining 1,300 parking spaces near Petco Park as required by the City's contract with the Padres. Costs for capital infrastructure (e.g. road improvements); MTS bus yard relocation; environmental remediation; and trolley enhancements are not identified. In January 2018, funding commitments to the Facility would adjust annually by a construction cost index. Bond financing costs may also be higher than anticipated given the possibility of rising interest rates.

Following construction, remaining TOT must fund \$29 million annually in O&M and capital renewal, and a \$25 million reserve. Up to 1% of TOT revenue would augment the 1% already dedicated to tourism marketing. TOT funds remaining after funding all Facility and tourism marketing costs would go to the City's General Fund. Actual project costs, financing costs, and TOT revenue growth will significantly impact when, how much and whether any revenue would flow to the City's General Fund. If TOT revenues cannot cover stipulated requirements in a given year, General Fund support may be necessary, reducing funding available for other public purposes.

San Diego's current effective TOT rate (the combined TOT and TMD) is 12.5% - below the average of other comparable cities. A 16.5% TOT rate would put San Diego among cities with the highest TOT rates, potentially impacting hotel occupancy.

The 16.5% TOT rate would be reduced to 13.5% upon any of the following:

- The earlier of 50 years or full repayment of Facility bonds;
- The Chargers stop playing home games in Qualcomm Stadium for two consecutive years prior to Facility construction; or
- Specified project requirements cannot be satisfied within 10 years.

Once the TOT increase is reduced from 16.5% to 13.5%, 2/3rds of the remaining 3% TOT increase would be allocated to tourism marketing, and 1/3rd to provide ongoing support for the Facility.

## ARGUMENT IN FAVOR OF MEASURE C

**It will be more than a football stadium.**

It will be a multi-use facility that will serve as an expanded convention center, a stadium for the Chargers and a world-class events center.

It will be a home for international soccer, collegiate basketball championships, extreme sports competitions, concerts and political conventions.

The ground level will be filled with coffee shops, retail spaces, a museum and an incubator for start-up businesses.

And it will also be a spectacular site for America's national holiday: The Super Bowl.

**No new or increased taxes will be imposed on San Diego residents.**

The Chargers and the NFL will be contributing \$650 million in private investment.

The rest will be paid through an increase in the hotel tax paid by visitors to San Diego.

Residents of the City of San Diego who don't stay in a hotel room in the City will not pay for the development or operation of this facility.

**The City will oversee the design, construction and operation of the facility, not the Chargers.**

The measure plans for a new public governing structure or Joint Powers Authority to oversee the design, construction, operation and maintenance of the new facility and manage the hotel taxes and the bonds to complete the development.

Again, no general fund dollars are designated to finance or operate any part of the project.

Even more, the initiative would relieve existing obligations at Qualcomm Stadium that are currently paid out of the general fund totaling \$15 million per year.

**The facility will create new local jobs.**

The facility will create 17,000 jobs during its construction.

In addition, between the Chargers' operations and other events at the facility 3,000 permanent jobs will be created in San Diego.

JERRY SANDERS  
President & CEO, San Diego Regional  
Chamber of Commerce

CAROL KIM  
Boardmember, Middle Class Taxpayers  
Association

JUAN VARGAS  
Member of Congress

NICHOLAS SEGURA  
San Diego Building & Construction Trades  
Council

JOHN THOMSON  
Retired Deputy Fire Chief

## ARGUMENT AGAINST MEASURE C

Vote No on a Downtown Stadium - Jobs and Streets First!

*Dean Spanos's Measure C is a Bad Deal for San Diego*

### Raises Taxes by More Than \$1 Billion

It is a massive tax increase that should be spent on repairing streets, hiring 911 dispatchers and fully funding after-school programs. Instead of paying for those services, we would be raising taxes to help fund a rent-free stadium for Dean Spanos and his billion-dollar corporation. Measure C would be one of the largest tax increases in city history and the largest bond offering.

### Does Not Require Any New Parking or Traffic Improvements

Getting in and out of Downtown San Diego is already difficult. So is finding parking. Dean Spanos's stadium would make a bad situation worse. His tax measure exempts him from providing parking spaces required under the law. So if Measure C passes Dean Spanos would receive a special benefit. It means San Diego taxpayers would be forced to pay for parking and infrastructure to reduce traffic.

### Does Not Protect San Diego Taxpayers

An independent analysis commissioned by the City found the public contribution could be \$2.3 billion over 30 years. Four independent analyses all reached the same conclusion – the proposed hotel tax increase might not cover costs. The City's Independent Budget Analyst said low hotel tax revenues could prompt the City to cover stadium costs with money normally used for public safety and other core services.

### Measure C Threatens San Diego's Tourism Economy and Jobs

Comic-Con and other large conventions are opposed to the measure. When we lose conventions, tourism declines. When tourism declines, we lose jobs, our economy suffers and tax revenues the city relies on for street repairs and other services fall.

The City has more important priorities. **Vote no on a bad deal!**

HANEY HONG  
San Diego County  
Taxpayers Association  
President and CEO

JULIE MEIER WRIGHT  
Former California Secretary  
of Trade & Commerce and  
Retired CEO of San Diego  
Regional Economic  
Development Corporation

VICE ADMIRAL PETER HEKMAN  
US Navy (RET.)

DAVID ALVAREZ  
Councilmember

CHRIS CATE  
Councilmember

# CITY OF SAN DIEGO

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

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## MEASURE D

**FACILITIES AND TOURISM TAX INITIATIVE.** Should the measure be adopted to: among other provisions, increase San Diego's hotel occupancy tax up to 5%; end Tourism Marketing District; allow hoteliers to create assessment districts and use hotel occupancy taxes for downtown convention center and not a stadium; prohibit contiguous expansion of existing convention center; create downtown overlay zone for convention and sports facilities; create environmental processes; and allow Qualcomm stadium property's sale for educational and park uses?

---

This measure's approval threshold could be affected by legal issues currently before the California Supreme Court.

Due to the size of the full text of this measure you will be mailed a separate, **SUPPLEMENTAL** pamphlet which will contain the full text of Measure D (and C), also including the Ballot Question, Official Title and Summary, Impartial Analysis, Fiscal Impact Statement, Argument In Favor, and Argument Against, which are also printed below.

You may also view the full text of the measure at [www.sdvote.com/en/measure-d.pdf](http://www.sdvote.com/en/measure-d.pdf).  
(NOTE: Web address is in all lower case letters.)

## OFFICIAL TITLE AND SUMMARY

### BALLOT TITLE

Tax and Facilities Initiative: Zoning for Downtown Convention and Sports Facilities; Transient Occupancy Tax Increase for Tourism Marketing, Convention Facilities, and General Uses; Authorizing Sale of Mission Valley Stadium Property for University Facilities and Parks

### BALLOT SUMMARY

This measure would amend the San Diego Municipal Code to, among other things, increase the transient occupancy tax by up to 5%, and allow hoteliers to retain most of the increase as reimbursement for assessments they make to newly formed assessment districts. Assessment districts would be formed by hoteliers for development of a convention center that is not contiguous with the existing convention center in downtown San Diego, and that may be combined with a sports facility. Assessment districts could also be formed for tourism marketing.

The development area for the future convention center and sports facilities would be defined by a new overlay zone with specific development policies. Projects allowed by the new overlay zone would be subject to different environmental processes and requirements in place of state laws.

## BALLOT SUMMARY (CONTINUED)

The measure would also authorize the sale of 166 acres of City-owned property in Mission Valley to one or more local colleges or universities or the San Diego River Conservancy, with certain conditions for sale and use of the property.

The tax increase provisions can be summarized as follows: If adopted, this measure would increase the City's transient occupancy tax rate by 5% for hotels with more than 30 rooms, and for recreational vehicle parks and campgrounds, for a total tax rate of 15.5%, and by 3.5% for hotels with less than 30 rooms, for a total tax rate of 14%. These increased rates would be in effect until changed by voters.

If any of the municipal code amendments included in the measure are invalidated by a court, then the measure provides that all of the measure's provisions would be invalid. If this happens, the tax increase likely also would be invalidated and would terminate.

This measure was placed on the ballot by the City Council after voter signatures qualified the initiative measure for the ballot.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend the San Diego Municipal Code to:

- Add zoning for development of a convention center, sports facilities, or combined facilities (Overlay Zone) for a twelve-block area east of Petco Park.
- Authorize creation of new improvement districts to fund a convention center, tourist-serving transportation infrastructure, and maintenance and repair of tourist facilities in the Overlay Zone. These districts would be formed by hoteliers, funded through assessments, and subject to laws regulating assessment districts. Assessments could not be used for a sports facility or on-site expansion of the existing convention center, and the City would be prohibited from funding any projects for convention center, sports, or combined facilities in the Overlay Zone.
- Eliminate the existing Tourism Marketing District and end its assessments. This District currently promotes the City to visitors, funded through assessments of up to 2% of hotel room rates.
- Increase the City's Transient Occupancy Tax (TOT). This tax is paid by guests at hotels, recreational vehicle parks and campgrounds. The tax is itemized on guests' bills, collected from guests by the operator and turned over to the City. The current tax is 10.5%. This measure would increase TOT to 15.5% for larger hotels, recreational vehicle parks and campgrounds, and to 14% for smaller hotels.
- Instead of depositing with the City all TOT revenue collected from guests, this measure would allow hoteliers to keep revenues from up to 2% of the TOT rate as reimbursement for assessments they paid to a newly formed assessment district covering development of a downtown convention center, and up to 2% as reimbursement for assessments paid to a newly formed assessment district for tourism marketing.
- Repeal the existing requirement for spending revenue from 4% of the TOT rate on City promotion.
- Authorize the City Auditor to audit collection and reporting of TOT.



## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

- Block the City from participating in any project to develop an on-site expansion of the San Diego Convention Center on Harbor Drive, and its operation, without a public vote; authorize the City to hire the improvement district established by hoteliers to operate the existing convention center and handle tourism marketing.
- Authorize the sale of the 166-acre Qualcomm stadium site in Mission Valley to one or more local colleges or universities or the San Diego River Conservancy, with conditions relating to setting aside 28 acres for river restoration and an urban rivers research center, 22 acres for development of public parks, and walking and biking trails.
- Create a local environmental process for convention center and sports facility projects in the Overlay Zone, replacing the California Environmental Quality Act (CEQA). The local environmental law would require specific mitigation measures in addition to the mitigation, monitoring and reporting requirements of CEQA. It would create a new hearing process and broader rights to bring environmental lawsuits.

This measure provides that if any provision is invalidated by the courts, the entire measure would be invalid, possibly invalidating the tax increase after revenue is collected. The measure does not address potential consequences of invalidating provisions already implemented.

## FISCAL IMPACT STATEMENT

This measure would increase the City's transient occupancy tax (TOT) from 10.5% to 15.5% for hotels with 30 or more rooms, Recreational Vehicle Parks, and Campgrounds. TOT for hotels with less than 30 rooms would increase from 10.5% to 14%. Revenue collected pursuant to these tax increases would be deposited in the City's General Fund and used for general governmental purposes. It is estimated that this TOT increase could generate approximately \$98 million annually beginning in 2017 and increase or decrease thereafter reflecting the growth or decline in the number of visitors to the City.

Additionally, this measure eliminates a 2% assessment that hotels currently charge customers and use to fund a tourism marketing district (TMD). Instead, this measure allows hotels the option to form special assessment districts and retain a portion of collected TOT funds for (a) tourism marketing, and/or (b) a new non-contiguous convention center expansion in the East Village. If hotels retain the maximum amount for both purposes, they would retain up to 4% (\$80 million) annually of TOT that would otherwise be remitted to the City (up to 2% for tourism marketing and 2% for a non-contiguous convention center expansion).

It is uncertain if hotels will elect to participate in these special assessment districts. Depending on how many hotels participate in the special assessment districts and at what level of assessment, the additional TOT revenue initially generated for the City's General Fund could range from \$18 million annually (if all hotels fully participate) to \$98 million annually (if no hotels participate).

If hotels elect to form special assessment districts for tourism marketing and/or a new non-contiguous convention center expansion, it is estimated the City Treasurer would incur administrative costs of approximately \$234,000 in the first year, and at least \$84,000 annually thereafter, to inspect and audit hotel records to ensure proper payment is being made to the City.

The City would recover these expenses from special assessment district funds.

The City is currently required to use 4% of the existing 10.5% TOT solely for programs and services promoting the City. This measure repeals this requirement, making the 4% portion of TOT unrestricted and available for any public purpose or service, including promoting the City.

## FISCAL IMPACT STATEMENT (CONTINUED)

This measure prohibits construction of a contiguous bay-front convention center expansion without a public vote. The measure also prohibits public funding from being spent on a new stadium without a public vote.

Should the Chargers stop playing at Qualcomm Stadium in Mission Valley, this measure would authorize the City to sell the site to certain educational or environmental non-profit institutions for low-density development, provided the purchaser implements specified property improvements. The specified development and improvement requirements in this measure could reduce the sale value of the Qualcomm site.

San Diego's current effective TOT rate (the combined TOT and TMD) is 12.5%, below the average of other comparable cities. A 15.5% TOT for most hotels would put San Diego among those cities with higher TOT rates, potentially impacting hotel occupancy.

## ARGUMENT IN FAVOR OF MEASURE D

### YES on D: Protect Local Taxpayers & Resources.

Tourists and residents share our beaches, bays, parks, sports and infrastructure, but politicians have let large corporate hotels dictate tourism policy *without a public vote*.

Industry studies show that San Diego's hotel tax rate on tourists is below rates charged by competing cities.

The result: hotel profits soar, while the tourism industry escapes paying its fair share for streets, sidewalks, public safety, and other amenities that serve visitors *and* are important to our quality of life.

The League of Women Voters, the League of Conservation Voters, taxpayer advocates, sports fans, and Aztec alumni all support Yes on D.

### YES on D: Put Local Taxpayers First.

- Set general-fund tax on large hotels at 15.5% – some cities charge tourists more: Anaheim, 17%; San Francisco, 16.25%; Los Angeles, 15.5%.
- End taxpayer-funded hotel marketing giveaways.

### YES on D: Protect Local Resources.

#### Mission Valley?

- **YES** to River Park, transit-dependent university uses, sports, and public access.
- **Stop** massive 6,000-unit condo plan and gridlock.

#### San Diego's Bayfront?

- **YES** to protect tourist *and* resident access to Bay.
- **Stop** walling off the Bay without a public vote.

#### Chargers Stadium?

- **YES** to limit City to shared land and infrastructure.
- **Stop** taxpayer funds for stadium/arena.

#### Convention Center Expansion?

- **YES** to return on investment *and* cap on spending.
- **Stop** blank checks and "pie-in-the-sky" promises.

#### Tourism Marketing?

- **YES** to proper oversight *and* cap on City spending.
- **Stop** blank checks for large hotels.

Large Hotels and the Chargers Must Pay Their Own Way

Vote **YES** on D <http://citizensplan.org>

Protect Local Taxpayers. Protect Local Resources.

DONNA FRYE  
Small Business owner/  
City Councilmember

DAVID ALVAREZ  
City Councilmember/  
SDSU alumnus

SCOTT BARNETT  
President, Taxpayers Advocate.org

MARTY BLOCK  
State Senator/Chair,  
Budget Subcommittee #1 (Education Finance)

JEFF MARSTON  
Past President, SDSU Alumni Association

## ARGUMENT AGAINST MEASURE D

Vote **NO** on Measure D

### Measure D Could Affect Comic-Con Remaining in San Diego

"Comic-Con has stated in the past, and continues to believe, a contiguous, expanded convention center is one that will benefit the city best. It appears this ballot initiative does not favor that scenario." - Comic-Con

In fact, Measure D specifically prohibits the contiguous expansion of the Convention Center.

### Measure D Raises Taxes

Measure D will raise TOT taxes to 15.5% and will eliminate the Tourism Marketing District that promotes San Diego and brings in tourists from around the world. Measure D will seriously impact San Diego's tourist economy and the nearly 200,000 jobs that depend on it.

### Measure D Crafted Behind Closed Doors by Special Interests

This complicated and convoluted initiative was crafted in secret by special interests, a few self-serving hoteliers, and downtown insiders. Measure D would allow unelected special interests to collect and spend your taxes.

### Legal Flaws in Measure D Puts Taxpayers at Risk

Legal experts have expressed serious reservations regarding Measure D. City Attorney's office released a comprehensive legal analysis that identified a series of legal risks to the City. The poorly written measure contains an unusual "poison pill" provision that will create financial risk for the City. **Legal challenges would take years and cost taxpayers millions.** Read analysis at [www.sandiego.gov/cityattorney](http://www.sandiego.gov/cityattorney)

### Measure D is Likely Unconstitutional

According to the California Constitution, an *initiative must be limited to a single subject*. Measure D, however, asks voters to approve over 20 unique provisions including: tax hikes, creating new land use zones, creates new bureaucratic environmental laws to replace the California Environmental Quality Act, authorizes the sale of Qualcomm stadium site, and requires the Port of San Diego to spend millions of taxpayer dollars on an ill-advised scheme.

Vote **NO** on Measure D!

**RHIANA WILSON**  
Keep Comic-Con in San Diego, Founder

**C. TERRY BROWN**  
Lodging Industry Association, Chairman

**GREG STEIN**  
San Diego County Taxpayers  
Association, Chairman

**SCOTT SHERMAN**  
San Diego City Councilmember,  
District 7

# CITY OF SAN DIEGO

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

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## MEASURE E

**CHARTER AMENDMENT REGARDING QUALIFICATIONS, VACANCY, AND REMOVAL FOR MAYOR, CITY ATTORNEY, AND COUNCIL.** Shall the Charter be amended to include a new article adding: incapacity, felony conviction, and removal as grounds for vacancies in office; a procedure for calling a special election to remove an officer for cause; a revised procedure for filling vacancies; to require the City Attorney be a licensed attorney; and to define authority during vacancies and enforcement of office forfeiture?

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

Full text of this measure follows the argument.

### BALLOT TITLE

Charter Amendments Related to Qualifications, Vacancy, Removal from Office, and Succession of the Mayor, City Attorney and City Council

### BALLOT SUMMARY

This measure would amend the San Diego Charter to, among other things:

- Require that the City Attorney have been licensed to practice law in California for ten years when seeking office;
- Provide more detail regarding who performs duties, and what duties may be performed, when an elective office is vacant;
- Define what is a vacancy for all elective officers, also adding felony conviction and physical or mental incapacity as new grounds for vacancy;
- Add a section providing for the removal of elective officers for dereliction of duty or malfeasance in office by special election; and
- Add a section providing a uniform procedure for filling vacancies in the elective offices of Mayor, City Attorney and City Council.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend the San Diego Charter related to the qualifications, succession, forfeiture of office, vacancy, and removal of the Mayor, City Attorney, and City Council.

This measure was drafted after the San Diego County Grand Jury issued a report outlining the San Diego Charter's lack of a procedure to remove elective officers, other than by voter-initiated recall. In response to the Grand Jury, the Council agreed to review the suggestions and consider potential Charter amendments. The Council created a Charter Review Committee, consisting of five Councilmembers, which held hearings to consider the issue.

If approved by voters, this measure would amend the Charter to clarify how an elective officer forfeits office for certain contracting and fraud offenses; define who exercises authority during vacancies and the scope of such authority; and add a requirement that the City Attorney be licensed for ten years in the State of California.

The Charter currently addresses vacancies occurring after the death, resignation, or recall of Councilmembers and the Mayor. If approved, the Charter amendments would define vacancy for all elective officers, and add mental or physical incapacity, felony conviction, and removal as additional causes of vacancies.

The amendments also would add a procedure for removing elective officers for malfeasance or dereliction of duty. The City Clerk would notify the Council of an elective officer's conviction of a misdemeanor involving official duties or moral turpitude, or a court's ruling that an elective officer failed to perform official duties after a court order. After notification, three-fourths of the Council (currently seven of nine members) may call a special removal election; voters would be asked to remove the elective officer by majority vote. The Council would be required to adopt a complete procedure for removal elections in the Municipal Code. This could include limitations on elections when officers are already running for reelection.

The removal election would be a new method for San Diego voters to remove an elective officer. Voters would retain their constitutional right to recall an elective officer, which is also specified in Charter section 23. A successful recall petition would suspend other removal proceedings. San Diego would be the first California city with a Council-initiated special removal election; thus, no court has analyzed whether this procedure interferes with voters' constitutional right to recall elective officers.

The Charter currently provides separate procedures for filling vacancies in each elective office. If approved, amendments would provide a uniform procedure for the Mayor, City Attorney and Council, based on existing procedure for vacancies of the Mayor or a Councilmember. If more than one year remains in an elected official's term, voters choose a replacement by special election. When less than one year remains, the Council appoints a successor. City Attorney vacancies previously were filled by appointment only.

The Council's Charter Review Committee considered this measure and the Council placed it on the ballot. If approved, the Charter amendments would become effective after they are chartered by the California Secretary of State.

## FISCAL IMPACT STATEMENT

This measure would amend existing Charter sections and add new Charter sections to modify existing provisions or include new provisions related to qualifications, vacancies, removal, and succession of elective officers.

The estimated costs associated with these Charter amendments, if any, are negligible and will not have a material fiscal impact to the City.

## ARGUMENT IN FAVOR OF MEASURE E

Measure E describes in one convenient, easy-to-read location in the City's Charter the processes by which the Mayor, City Attorney and Councilmembers qualify to run for office, how they are elected to office, and how they can be removed from office.

Currently, the Charter only allows for the removal of elected officials by resignation or recall. Most other cities have additional options for removing elected officials from office and clearer language about how to handle vacancies in office.

The proposed changes incorporate best practices used by other major cities and lessons learned during the Filner Mayoral administration and transition period afterward regarding the removal of elected officials from office.

This Charter amendment will:

- Describe how to remove elected officials who are convicted of felonies and other serious crimes, those who become physically or mentally incapacitated, and/or those who are derelict in their official duties.
- Clarify the process for filling vacancies in elected offices.
- Create a clear process of interim authority that describes who will take over a vacant office until a replacement is appointed or elected, along with the duties of interim elected officials.
- Add minimum qualifications that the City Attorney must be a licensed attorney in the State of California for ten years. (Currently the City Attorney does not even need to be a licensed attorney.)

**Your "yes" vote on Measure E will create a better process for removing elected officials from office and will ensure stability and continuity of government operations when an elected office becomes vacant.**

Measure E is unanimously supported by the City Council, the Chamber of Commerce, the League of Women Voters and the San Diego County Taxpayers Association.

SHERRI LIGHTNER  
Council President  
City of San Diego

JERRY SANDERS  
President and CEO  
San Diego Regional Chamber  
of Commerce

HANEY HONG  
President and CEO  
San Diego County  
Taxpayers Association

JEANNE BROWN  
President  
League of Women Voters  
of San Diego

## ARGUMENT AGAINST MEASURE E

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



# FULL TEXT OF MEASURE E

## ARTICLE II

### NOMINATIONS AND ELECTIONS

#### SECTION 7: ELECTIVE OFFICERS RESIDENCY REQUIREMENT

An elective officer of the City shall be a resident and elector of the City.

In addition, every Council-member shall be an actual resident and elector of the district from which the Council-member is nominated. ~~Any Council-member who moves from the district of which the Council member was a resident at the time of taking office forfeits the office, but no Council member shall forfeit the office as a result of redistricting. The office of a Councilmember shall be vacated if he or she moves from the district from which the Councilmember was elected. Redistricting that occurs during a Councilmember's term shall not operate to create a vacancy.~~ The Council shall establish by ordinance minimum length of residency requirements for candidacy to elective office, whether by appointment or election.

## ARTICLE III

### LEGISLATIVE POWER

#### SECTION 12: THE COUNCIL

(a) through (d) [No change in text.]

~~(e) If a vacancy occurs for any reason in the office of a Council District, the following procedures shall apply:~~

~~(1) If the vacancy occurs for any reason other than a successful recall election, and,~~

~~(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,~~

~~(B) If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.~~

## FULL TEXT OF MEASURE E (CONTINUED)

- (i) ~~If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.~~
- (ii) ~~If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.~~
- (2) ~~If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy. Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term. For purposes of this Charter section 12, a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(f). If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.~~
- (f)(e) It is the duty of the Councilmembers to attend all Council meetings. The Council shall vacate the seat of any Councilmember who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless the absence thereof is excused by resolution of the Council.
- (g)(f) Councilmembers shall devote full time to the duties of their office and not engage in any outside employment, trade, business or profession which interferes or conflicts with those duties.
- (h)(g) Councilmembers shall not be eligible during the term for which they were appointed or elected to hold any other office or employment with the City, except as Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.
- (h) Whenever a vacancy exists in the office of a Councilmember, the chief of staff for the departing Councilmember shall manage the office of the Councilmember under the authority of the Council President, until a replacement is appointed or elected pursuant to the procedures for filling vacancies provided by this Charter.

**FULL TEXT OF MEASURE E (CONTINUED)**

**ARTICLE V**

**EXECUTIVE AND ADMINISTRATIVE SERVICE**

**SECTION 40: CITY ATTORNEY**

(third paragraph) 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 must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

...

(thirteenth paragraph) 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.~~

(new final paragraph) Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

**ARTICLE VII**

**FINANCE**

**SECTION 108: FORFEITURE OF OFFICE FOR FRAUD**

Every officer who shall willfully approve, allow, or pay any demand on the treasury not authorized by law, and found civilly liable by a court of competent jurisdiction, shall be liable to the City individually and on his or her official bond, for the amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever debarred and disqualified from holding any position in the service of the City. Violation of this section may also be prosecuted as a misdemeanor.

## FULL TEXT OF MEASURE E (CONTINUED)

### ARTICLE XIV

#### MISCELLANEOUS PROVISIONS

##### SECTION 217: NO PAYMENT FOR OFFICE

No officer or employee of the City shall give or promise to give to any person any portion of his or her compensation, or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for or elected to any office or employment. Any officer or employee found guilty by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position.

##### SECTION 218: NO CONTRIBUTIONS FOR EMPLOYMENT

No officer or employee shall solicit or accept any donation or gratuity in money, or other thing of value, either directly or indirectly, from any subordinate or employee, or from anyone under his or her charge, or from any candidate or applicant for any position as employee or subordinate in any Department of the City. Any officer or employee found guilty by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position.

### ARTICLE XV

#### STRONG MAYOR FORM OF GOVERNANCE

##### SECTION 265: THE MAYOR

(a) through (d) [No change in text.]

~~(e) If a vacancy occurs in the Office of Mayor for any reason other than a successful recall election, and,~~

~~(1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacancy.~~

~~(2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.~~

~~(A) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the Office of Mayor.~~

~~(B) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the Office of Mayor in the first special election shall be the only candidates for the Office of the Mayor and the names of only those two candidates shall be printed on the ballot for that seat.~~

## FULL TEXT OF MEASURE E (CONTINUED)

- ~~(f) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.~~
- ~~(g) Whether a person is appointed or elected to the Office of Mayor, whatever the reason for the vacancy, that person shall serve as Mayor for the remainder of the unexpired term.~~
- ~~(h) Upon the appointment or election of any person to the Office of Mayor, any other City office held by that person is automatically vacated.~~
- ~~(i)(e) During the period of time wWhen an appointment or election is pending to fill a vacancy in the Office of Mayor, the presiding officer of the Council shall serve as Interim Mayor and shall be vested with the authority to supervise the staff remaining employed in the Office of the Mayor, to direct and exercise control over the City Manager in managing the affairs of the City under the purview of the Mayor and to exercise other power and authority vested in the Office of the Mayor when the exercise of such power and authority is required by law. This limited authority includes circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority does not include the exercise of the power of veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the Office of Mayor. The presiding officer while acting under this section pending the filling of a mayoral vacancy, shall not lose his or her rights as a Member of the Council. While serving as Interim Mayor, the presiding officer of the Council shall not chair Council committee meetings or Council meetings. Other duties of the presiding officer of the Council serving as Interim Mayor shall be performed as provided by the rules of Council established pursuant to this Charter; however, changes may not be made to Council committee structure or assignments while the presiding officer of the Council serves as Interim Mayor.~~
- ~~(f) The time provided by the Charter for the Mayor to sign resolutions and ordinances shall not apply during a mayoral vacancy. Resolutions and ordinances passed by the City Council shall take effect as they would if the Mayor had no veto power.~~
- ~~(g) The Interim Mayor shall not have authority to appoint members to commissions, boards and committees defined in the Charter. The Charter's 45-day waiting period to take action on such appointments will be suspended, however, and the Council will have the authority to appoint and confirm members to such City boards, commissions, and committees during the interim period, subject to other governing laws regarding noticing and posting of vacancies. The Interim Mayor and Council are not authorized to make appointments to any boards, commissions, or committees when prohibited by state law.~~
- ~~(h) While serving as Interim Mayor, the presiding officer of the Council may continue to represent the City as a representative, alternate or liaison to any outside boards, commissions, committees, and governmental agencies to which he or she has been appointed and serve in a leadership capacity, if applicable.~~
- ~~(j) For purposes of this section, a vacancy may result from death, resignation, or recall. If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.~~

## FULL TEXT OF MEASURE E (CONTINUED)

### ARTICLE XVI

#### ELECTIVE OFFICERS

##### SECTION 300: VACANCY IN ELECTIVE OFFICE

A vacancy in elective office occurs when any of the following events occur during the term:

- (a) The death of the elective officer.
- (b) An elective officer ceases to be a resident and elector of the City or a Councilmember moves from the district that the Councilmember was elected to represent. Redistricting shall not cause a vacancy in the office of a Councilmember.
- (c) An adjudication by a court of competent jurisdiction declaring that the elective officer is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the elective officer will not be able to perform the duties of his or her office for the remainder of his or her term.
- (d) The resignation of an elective officer, effective on the date specified in the written letter of resignation or, if there is no date specified in the letter, upon the date of receipt of the letter by the City Clerk.
- (e) For a Councilmember only, unexcused absences from eight consecutive meetings or fifty percent of any scheduled meetings as provided by section 12 of this Charter.
- (f) An elective officer's conduct requiring forfeiture of office, upon conviction or finding of civil liability by a court of competent jurisdiction, as provided by this Charter. An elective officer shall be deemed to have been convicted or found liable when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (g) An elective officer's conviction of a felony. An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (h) The elective officer's removal from office. An elective officer may be removed only by recall or removal proceedings as provided by this Charter.

##### SECTION 301: REMOVAL FOR CAUSE

- (a) Any elective officer is subject to removal for cause for dereliction of duty or malfeasance in office as provided in this section.
  - (1) Dereliction of duty means an adjudication that the elective officer has failed, refused, or neglected to perform the duties of the office, except when prevented by illness, injury, or other reasonable cause.
  - (2) Malfeasance in office means a conviction for crimes of moral turpitude or crimes involving a violation of official duties.

## FULL TEXT OF MEASURE E (CONTINUED)

- (b) Upon an elective officer's criminal conviction or a court's adjudication of dereliction of duty, the City Clerk shall provide notice of the conviction or adjudication to the Council and the subject elective officer.
  - (1) An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
  - (2) A court of competent jurisdiction's order of enforcement for failure to obey a writ of mandamus constitutes an adjudication of dereliction of duty.
- (c) Upon notification from the City Clerk of a criminal conviction or adjudication of dereliction of duty, the Council may proceed to vote on calling a special municipal election as provided by subsection (d).
- (d) Upon an affirmative vote of no less than three-fourths of the Council (currently seven of nine Councilmembers) that cause exists for removal, the Council shall call a special election in compliance with the City's election laws for the purpose of submitting to the voters a proposition to remove and replace the elective officer. By ordinance, the Council shall provide a complete procedure for special elections to remove and replace elective officers by a majority of voters, which may include reasonable limitations on calling special elections within 180 days of a scheduled municipal or statewide election where the subject elective officer is a candidate for his or her current elective office. If there is a municipal or statewide election scheduled to be held within 180 days, the Council may consolidate the special election with that election.
- (e) Nothing in this section shall be construed to interfere with the power of the people to initiate a recall of an elective officer, as provided in this Charter and the California Constitution. Removal proceedings under this section shall be suspended any time a recall petition is found to be sufficient as defined by the City's election laws.

## SECTION 302: SUCCESSION TO ELECTIVE OFFICE

- (a) If a vacancy in the office of an elective officer occurs by reason of a successful recall or removal election, the Council shall adopt procedures to fill the vacancy.
- (b) If a vacancy occurs in the office of an elective officer for any reason other than a successful recall or removal election, the following procedures shall apply:
  - (1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacant office within 30 days of the office being vacated. Any person appointed by the Council to fill a vacant office shall not be eligible to run for that office for the next succeeding term; or,
  - (2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.
  - (3) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.



## FULL TEXT OF MEASURE E (CONTINUED)

- (4) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within 90 days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, in which case the Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the vacant office in the first special election shall be the only candidates for the vacant office and the names of only those two candidates shall be printed on the ballot for that office.
- (5) The person appointed or elected to fill a vacancy in elective office shall serve in that elective office for the remainder of the unexpired term.

END OF MEASURE

# CITY OF SAN DIEGO

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

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## MEASURE F

### CHARTER AMENDMENT REGARDING REQUIRED TERM OF SERVICE FOR CERTAIN TERMINATIONS OR SUSPENSIONS OF DEPUTY CITY ATTORNEYS.

Shall the City Charter be amended to change the term of service required of Deputy City Attorneys, for protection from termination or suspension without good cause, from two years or more of continuous service to one year or more of continuous service, which protection would continue not to apply to layoffs due to lack of work or insufficient appropriations?

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

Full text of this measure follows the argument.

### BALLOT TITLE

Charter Amendment Regarding Required Term of Service for Certain Terminations or Suspensions of Deputy City Attorneys.

### BALLOT SUMMARY

This measure would amend the San Diego Charter to reduce the number of years of service necessary before a Deputy City Attorney can only be terminated or suspended for good cause, with certain exceptions listed in the Charter.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend the fifth paragraph of Article V, section 40 of the San Diego Charter, which currently provides that a Deputy City Attorney who has served continuously for two or more years, may not be terminated or suspended without good cause. This provision was added to the Charter by Proposition B, adopted by the voters at the special municipal election held on November 2, 2010.

If approved by voters, this Charter amendment would reduce the period of continuous service required by a Deputy City Attorney from two years to one year, so that a Deputy City Attorney would have good cause protection after one year of service. The good cause provision does not apply to layoffs due to lack of work or lack of funding.

This measure was proposed by the City Council, approved by its Charter Review Committee, and placed on the ballot by the Council. If approved, the Charter amendment would become effective after it is chaptered by the California Secretary of State.

PR-09L0-F-1

N SD 489-066

## FISCAL IMPACT STATEMENT

This measure would amend a section of the City Charter related to the employment protections of Deputy City Attorneys in the Office of the City Attorney. Currently, Deputy City Attorneys with two years or more of continuous service are protected from termination or suspension without good cause, except for layoffs due to lack of work or insufficient appropriations. If approved, this measure would change the term of service required for these protections from two years or more of continuous service to one year or more of continuous service.

There is no fiscal impact associated with this Charter amendment.

## ARGUMENT IN FAVOR OF MEASURE F

Measure F will help attract and retain good lawyers for the City by ensuring the City Attorney's Office remains independent and non-political.

The City Attorney's Office should never be used to further an elected official's political agenda. Legal advice should always be based upon the law, not politics.

By shortening the probation period from two years to one year, deputy city attorneys achieve their job protections sooner. This measure makes it harder for politics to influence the office and its makeup.

Over the past five years, the City Attorney's Office has lost over 77 attorneys out of approximately 150 attorneys due to retention issues. The City needs every tool available to help attract and retain qualified lawyers in its workforce.

This measure protects the City and deputy city attorneys from political pressure, while maintaining quality standards.

The one year probation period makes sure that deputy city attorneys can only be fired for ethical lapses or poor legal work, but not for telling the truth, speaking up to prevent an illegal act, or for giving researched legal opinions.

A "YES" vote for Measure F protects taxpayers by ensuring the City Attorney's Office continues to provide quality legal advice to the City and maintains its professional reputation.

Measure F is supported by the City Council, the Deputy City Attorney's Association, the San Diego County Taxpayers Association and the League of Women Voters.

SHERRI LIGHTNER  
Council President  
City of San Diego

MARK MERCER  
President  
Deputy City Attorneys Association  
of San Diego

HANEY HONG  
President and CEO  
San Diego County Taxpayers Association

JEANNE BROWN  
President  
League of Women Voters of San Diego

## ARGUMENT AGAINST MEASURE F

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

**FULL TEXT OF MEASURE F**

**ARTICLE V**

**EXECUTIVE AND ADMINISTRATIVE SERVICE**

**SECTION 40: CITY ATTORNEY**

(fifth paragraph) No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for ~~two~~ one years or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

(sixth paragraph) To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

**END OF MEASURE**

# CITY OF SAN DIEGO

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

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## MEASURE G

**CHARTER AMENDMENTS REGARDING THE CITIZENS' REVIEW BOARD ON POLICE PRACTICES.** Shall section 43(d) of the City Charter be amended to rename the Citizens' Review Board on Police Practices as the Community Review Board on Police Practices, to replace references to "City Manager" with "Mayor and City Council," and to require the board to review all deaths occurring while someone is in the custody of the San Diego Police Department and all police officer-related shootings?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Amendments to the San Diego City Charter Related to the Citizens' Review Board

#### BALLOT SUMMARY

This measure would amend the San Diego City Charter to: (1) rename the Citizens' Review Board on Police Practices to the Community Review Board on Police Practices; (2) replace references to "City Manager" with "Mayor and City Council"; and (3) require the board to review all deaths occurring while someone is in the custody of the San Diego Police Department and all police-related shootings.

#### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend section 43(d) of the San Diego Charter related to the Citizens' Review Board on Police Practices, which was created in 1988 to independently review and evaluate citizen complaints against members of the San Diego Police Department and its administration of discipline arising from such complaints.

If this measure is approved by voters, the Charter would be amended to change the name of the Citizens' Review Board on Police Practices to the Community Review Board on Police Practices (the Board).

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

The amendments also would replace all references to "City Manager" in Charter section 43(d) with "Mayor and City Council." The amendments would provide for the City Council's participation in the selection of the Board's members and in creating rules and regulations necessary for the Board to carry out its functions.

The Board presently reviews all cases involving in-custody deaths and officer-related shootings, by agreement with the San Diego Police Department. This measure would amend the Charter to require that such reviews be conducted by the Board.

The City Council proposed the language of this ballot measure and placed it on the ballot after public hearings held by its Public Safety and Livable Neighborhoods, Rules, and Charter Review Committees. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

## FISCAL IMPACT STATEMENT

This measure would amend a section of the City Charter related to the Citizens' Review Board on Police Practices. The measure would effectuate the following three changes:

- Change the name of the Citizens' Review Board on Police Practices to the Community Review Board on Police Practices.
- Replace references to "City Manager" with "Mayor and City Council." The City of San Diego has not had a City Manager since 2006; instead executive authority is vested in the Mayor. This measure would update the Charter to reflect the City's current strong mayor form of government. Additionally, the City Council would be granted new shared oversight authority over the Board, along with the Mayor.
- Require the Board to review all deaths occurring while a person is in custody of the San Diego Police Department and all police officer-involved shootings. It is already the current practice of the Board to review these cases (with the exception of shootings of dogs and accidental discharges by officers). This measure would mandate the current practice in this regard.

There is no fiscal impact associated with these Charter amendments as they are not expected to increase the workload of the Board.

## ARGUMENT IN FAVOR OF MEASURE G

The Citizens' Review Board on Police Practices, established in 1988, is an independent body that reviews and evaluates complaints brought by the public of misconduct by members of the San Diego Police Department. The Board reviews and evaluates the administration of discipline arising from sustained complaints.

**YOUR YES VOTE ON PROPOSITION G WILL INCREASE PUBLIC CONFIDENCE IN GOVERNMENT AND THE ACCOUNTABILITY OF LAW ENFORCEMENT BY CONDUCTING IMPARTIAL AND INDEPENDENT INVESTIGATIONS OF CITIZEN COMPLAINTS OF MISCONDUCT CONCERNING THE SAN DIEGO POLICE DEPARTMENT.**

WHAT DOES PROPOSITION G DO?

Proposition G would:

- Expand regulatory power over the board in the Charter to include the City Council in addition to the Mayor, who currently has exclusive authority over the board;
- Explicitly state in the Charter that the board shall review all cases involving deaths that occur in police custody and officer related shootings; and
- Change the name of the board to the Community Review Board on Police Practices.

Proposition G will improve communication between the Police Department and the community, will increase police accountability and credibility with the public and will create a transparent complaint review process that is free from bias and informed of actual police practices. Most important, this batch of reforms inserts checks and balances in making the rules for the board, helping to fortify the public's trust in law enforcement which benefits both residents and officers.

Proposition G has received bipartisan support from the San Diego City Council.

PLEASE JOIN US IN VOTING YES ON PROPOSITION G.

TODD GLORIA  
City Councilmember

MYRTLE COLE  
City Councilmember

KEVIN FAULCONER  
Mayor

## ARGUMENT AGAINST MEASURE G

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



FULL TEXT OF MEASURE G

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 43: ADVISORY BOARDS AND COMMITTEES

(a) through (c) [No change in text].

(d) ~~Citizens'Community~~ Review Board on Police Practices. Notwithstanding any other provision of this Charter, the ~~City-Manager~~Mayor and City Council shall have the exclusive authority to create and establish a ~~citizens'community~~ review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The ~~City-Manager~~Mayor and City Council shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers. Nothing in such rules and regulations shall interfere with the board's authority to independently refer a completed citizen complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency. The board shall review all deaths occurring while a person is in the custody of the San Diego Police Department and all police officer-related shootings. The board shall submit semiannual reports to the ~~City-Manager~~Mayor and City Council concerning its evaluation of the San Diego Police Department's investigation of citizens' complaints; provided, however, that such reports shall not disclose any information required to be kept confidential by law.

END OF MEASURE

# CITY OF SAN DIEGO

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

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## MEASURE H

**CHARTER AMENDMENTS REGARDING PURCHASING AND CONTRACTING PROCESSES FOR THE CITY OF SAN DIEGO.** Shall the City Charter be amended to: require contracts for public works, goods, services, and consultants to be awarded through a competitive process in accordance with rules adopted by ordinance, remove the position of Purchasing Agent, eliminate the requirement to publish certain notices in printed newspapers, and update other provisions consistent with state law?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Charter Amendments Regarding Purchasing and Contracting Processes for the City of San Diego

#### BALLOT SUMMARY

This measure would amend the San Diego Charter by repealing and consolidating into one section several provisions related to purchasing and contracting for the City of San Diego. The amendments would require contracts for public works, goods, services, and consultants to be awarded through a competitive process, in accordance with rules adopted by the City Council by ordinance.

If approved, the amendments also would remove from the Charter the position of Purchasing Agent and the designation of an official City newspaper to be used to meet publishing requirements. The amendments also would adopt and apply California's conflict of interest laws to City contracting.

#### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure would amend sections of the San Diego Charter related to advertising and awarding of contracts, and other requirements for the City of San Diego's contracting of public works, goods, services, and consultants.

City contracting rules are found in the Charter, the San Diego Municipal Code, and Council Policy. Many requirements in those documents are duplicative. If approved by voters, this measure would repeal and consolidate into one section several Charter provisions regarding purchasing and contracting, requiring that contracts for public works, goods, services, and consultants be competitively bid in compliance with rules adopted by the City Council by

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

ordinance. Charter provisions requiring public works contracts to be awarded to the lowest responsible and reliable bidder would be repealed. Instead, the Municipal Code would be the primary document to provide specific requirements for City contracting.

The measure would continue the exceptions to competitive bidding currently found in the Charter, the Municipal Code, and state law. The Council would be required to adopt an ordinance regarding a competitive process to award consultant contracts, because the existing process is governed by Council Policy that is passed by resolution.

Both the Charter and state law prohibit City officials from having a conflict of interest in City contracting. The wording each law uses is different, however, which could lead to inconsistent results under the Charter and state law. If approved, this measure would amend the Charter to adopt California's conflict of interest laws for City contracting and allow the City to rely on interpretive opinions from state courts and administrative agencies in determining whether a conflict of interest exists.

The Charter defines the "City official newspaper" as a newspaper with daily circulation under contract to publish the City's advertising. The Charter and Municipal Code require certain contracts to be advertised in such a newspaper at least ten days before the deadline to submit bids. The Charter also requires notice to be published ten days before the Council's consideration of contracts over five years in duration. This measure would repeal the Charter requirement to designate and use such a newspaper. Advertising of City contracts would be governed by the Municipal Code, which currently includes the same requirements. California law, the Ralph M. Brown Act, requires the City to provide at least 72 hours' notice of Council consideration of all contracts, including those over five years in duration, but such notice would not have to be published in a newspaper.

If approved, the measure would not immediately have a significant effect on the City's purchasing and contracting processes, but would provide the Council with authority to make changes by ordinance, instead of through a public vote. Ordinances changing the City's contracting processes would be subject to referendum.

This measure was proposed by City staff involved with the procurement and contracting process, approved by the Council's Charter Review Committee, and placed on the ballot by the Council. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

### FISCAL IMPACT STATEMENT

This measure would repeal and replace sections of the City Charter related to contracting and procurement. These changes are intended to reflect updated processes and remove duplication between the City Charter, the City's Municipal Code, and the State Government Code.

If this measure is adopted, the City will no longer be required to notice public hearings for contracts exceeding five years in the City's newspaper of record. Instead, the City will be required to notice these public hearings on the online City Bulletin. This change will reduce the noticing fees paid by the City; in fiscal year 2016, affected noticing fees were approximately \$54,000.

Additionally, if this measure is approved, certain contracting and procurement provisions will be removed from the Charter and remain in the City's Municipal Code. Should these Municipal Code provisions subsequently be amended by City Council ordinance and without a public vote, it is possible that future procurement costs could change.

## ARGUMENT IN FAVOR OF MEASURE H

### YES on Measure H: Improve the City of San Diego's Purchasing and Contracting Processes

Measure H will update the Charter regarding the City of San Diego's purchasing and contracting activities to provide **simple, easy to understand rules**.

This Charter amendment will save the City time and money by:

- Providing clear restrictions for elected officials and city staffers to avoid any conflict of interest in the purchasing and contracting process. This will prevent any city employee who works on or develops a contract from being able to financially benefit from that contract.
- Making the rules governing purchasing and contracting the same as state law in order to avoid confusion.
- Giving city departments greater flexibility in how they procure goods and services to meet the various needs of the city.

By approving these proposed changes to the Charter, city officials will be able to use a **best value approach to purchasing and contracting**.

These changes will allow the City to avoid the problems that have occurred in the past with some major public works projects that were not completed on time or on budget that were awarded to the lowest bidding contractors.

A "Yes" vote on Measure H will benefit taxpayers by allowing for the timely delivery of quality projects, products and services at a reasonable cost.

Measure H is supported by the Mayor, the City Council, the San Diego County Taxpayers Association, the Chamber of Commerce and the League of Women Voters.

KEVIN FAULCONER  
Mayor  
City of San Diego

SHERRI LIGHTNER  
Council President  
City of San Diego

JEANNE BROWN  
President  
League of Women Voters of  
San Diego

HANEY HONG  
President and CEO  
San Diego County Taxpayers  
Association

JERRY SANDERS  
President and CEO  
San Diego Regional Chamber of Commerce

## ARGUMENT AGAINST MEASURE H

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

# FULL TEXT OF MEASURE H

## ARTICLE V

### EXECUTIVE AND ADMINISTRATIVE SERVICE

#### SECTION 35: PURCHASING AGENT

~~The Purchasing Agent shall make all purchases of supplies, materials, equipment, and insurance required by the various Departments or offices of the City, except as may be otherwise provided by the Council or this Charter. He shall prepare in consultation with the administrative officers of the City standard specifications for all supplies, materials, equipment, and insurance necessary for use by the various Departments or offices of the City.~~

~~In purchasing any supplies, materials, equipment and insurance required by the various Departments or offices of the City, if the cost of said supplies, materials, equipment and insurance exceeds a sum to be established by ordinance of the City Council, no such purchase shall be made without advertising for sealed proposals therefor. Notices calling for such sealed proposals shall be published for one day in the official newspaper of the City, and a contract let for such purpose only after the expiration of ten days following said advertising. If the cost of the said supplies, materials, equipment and insurance required by said City falls within a dollar range also established by ordinance of the City Council, the said purchase may be made by said Purchasing Agent without advertising for sealed proposals, but not until said Purchasing Agent has secured competitive prices from merchants or other persons interested in making the sale to said City and not until the Purchasing Agent has been authorized by the Council to make such purchase. Purchases of supplies, materials, equipment and insurance required by the various Departments or offices of the City which do not exceed in cost a sum established by ordinance of the City Council may be made by the Purchasing Agent directly upon the request of the department interested.~~

~~The Council shall by ordinance provide for the sale, exchange or other disposal by the Purchasing Agent of any surplus, used, obsolete or depreciated personal property belonging to the City.~~

~~The Council by resolution may order the purchase without advertising for bids of surplus commodities from the United States of America, or any agency thereof, or from any other public corporation, state or municipal, or any agency thereof. The Council may authorize the Purchasing Agent to participate in joint and cooperative purchasing with any other public corporation, state or municipal, or agencies thereof. The Council may also authorize said Purchasing Agent to sell to any other public corporation, state or municipal, any supplies, material and equipment which said City may have been able to purchase in quantity at a reduced price.~~

~~Supplies shall be furnished upon requisition either from the stores under the control of the Purchasing Agent or by purchase, and whenever so purchased shall be paid for by the Department or office furnished therewith. It shall be the duty of the Purchasing Agent to inspect or cause to be inspected all purchases, and reject any of those which are not up to the standard specifications provided therefor, and he shall not approve any bid or voucher for articles which are not in conformity with specifications, or which are at variance with any contract. The Purchasing Agent shall not furnish supplies to any Department or office unless there be to the credit thereof an available unencumbered balance sufficient to pay for such supplies.~~

~~Materials, supplies or equipment not needed by a Department or office, but necessary to another Department or office, may be transferred by the Purchasing Agent and a~~

## FULL TEXT OF MEASURE H (CONTINUED)

~~proper record made of the transaction. He shall have charge of such storerooms and warehouses of the City as the Manager may provide or the Council by ordinance may authorize. The Council may, upon recommendation of the Manager, authorize the Purchasing Agent to purchase materials, supplies, or equipment in common use by the Departments and offices in large quantities and store the same until requisitioned by the Departments or offices for use. The Council shall provide a sufficient revolving fund in the annual appropriation ordinance of an adequate amount for the purpose of creating a store's account and stock for future supply of the Departments and offices when needed.~~

~~The Purchasing Agent shall keep a record of all sources of supply, of all quotations received, of all awards made, of all inspections, of all requisitions filed, and of all vendors furnishing commodities to the City. He shall perform such other duties as may be prescribed by general law or ordinance or by the Manager.~~

### ARTICLE VII

#### FINANCE

#### SECTION 94: CONTRACTS

~~Contracts for in the construction, reconstruction or repair of public buildings, streets, utilities and other public works, for the provision of goods or services, and the hiring of architects, engineers, and other consultants, shall be competitively bid pursuant to rules when the expenditure therefor shall exceed the sum established by ordinance of the City Council, the same shall be done by written contract, except as otherwise provided in this Charter, and the Council, on the recommendation of the Manager or the head of the Department in charge if not under the Manager's jurisdiction, shall let the same to the lowest responsible and reliable bidder, not less than ten days after advertising for one day in the official newspaper of the City for sealed proposals for the work contemplated. If the cost of said public contract work is of a lesser amount than the figure established by ordinance of the City Council, the Manager may let said contract without advertising for bids, but not until the Purchasing Agent of the City shall have secured competitive prices from contractors interested, which shall be taken under consideration before said contract is let. The Council may, however, establish by ordinance an amount below which the Manager may order the performance of any construction, reconstruction or repair work by appropriate City forces without approval by Council. When such Council approval is required, the Manager's recommendation shall indicate justification for the use of City forces and shall indicate whether the work can be done by City forces more economically than if let by contract. The City Council may establish by ordinance contract amounts below which competitive bidding is not required. Unless otherwise required by ordinance, competitive bidding is not required for work done by City forces, services provided by non-profit organizations, in an emergency, or where competitive bidding is not required by state law.~~

~~In case of a great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster the Council may, by resolution passed by a vote of two thirds of the members elected to the Council, determine and declare that the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed, without advertising for bids or receiving the same, to expend, or enter into a contract involving the expenditure of any sum required in such emergency, on hand in the City treasury and available for such purpose. All contracts before execution shall be approved as to form and legality by the City Attorney.~~

## FULL TEXT OF MEASURE H (CONTINUED)

~~Each bidder shall furnish with his bid such security or deposit insuring the execution of the contract by him as shall be specified by the Council or as provided by general law. For contracts exceeding \$100,000.00, the Council shall require each contractor to insure the faithful performance of his contract by delivering to the City a surety bond in an amount specified by the Council, executed by a surety company authorized to do business in the State of California; provided, however, that in all contracts the Council shall require the retention of sufficient payments, under the contract to insure the protection of the City against labor or material liens.~~

~~The Council, on the recommendation of the Manager, or the Head of the Department not under the jurisdiction of the Manager, may reject any and all bids and readvertise for bids. The Council may provide that no contract shall be awarded to any person, firm or corporation if prison or alien labor is to be employed in performing such contract, or if the wage schedule for employees engaged in performing such contract is based on more than eight hours of labor per day. Any contract may be let for a gross price or on a unit basis and may provide for liquidated damages to the City for every day the contract is uncompleted beyond a specified date. It shall be competent in awarding any contract to compare bids on the basis of time completion, provided that when any award has been made in consideration, in whole or in part, of the relative time estimates of bidders for the completion of the work, the performance in accordance with such time limits shall be secured by a surety bond as hereinabove provided with adequate sureties and penalties, and provided further, that for any contract awarded solely or partially on a specified time for completion the Council shall not extend such time limits unless such extension be recommended by the Manager and the Head of the Department concerned.~~

~~Pursuant to state law, no officers of the City, whether elected or appointed, of the City of San Diego shall be or become directly or indirectly financially interested in, or in the performance of, any contract made by them in their official capacity, with or for the City of San Diego, or in the purchase or lease of any property, real or personal, belonging to or taken by said City or which shall be sold for taxes or assessments or by virtue of legal process or suit of said City. Any officer who person willfully violates violating this paragraph section of the Charter shall be guilty of a misdemeanor and shall immediately forfeit his or her office and be thereafter forever barred and disqualified from holding any elective or appointive office in the service of the City. No officer, whether elected or appointed, shall be construed to have an interest within the meaning of this section unless the contract, purchase, lease, or sale shall be with or for the benefit of the office, board, department, bureau or division with which said officer is directly connected in the performance of his duties and in which he or the office, board, department, bureau or division he represents exercises legislative, administrative or quasi judicial authority in the letting of or performance under said contract, purchase, lease or sale.~~

~~All contracts entered into in violation of this Section shall be void and shall not be enforceable against said City; provided, however, that officers of this municipality may own stock in public utility service corporations and the City permitted to contract for public utility service when the rates for such service are fixed by law or by virtue of the Public Utilities Commission of the State of California; and provided further, that no officer shall be prohibited from purchasing the services of any utility whether publicly or privately owned, whether or not the rates are fixed by law or by the Public Utilities Commission of the State of California; and provided further, that in designating any bank as a depository for the funds of said City, any officer interested as a stockholder or otherwise in such bank shall not be deemed to have an interest in such City contract within the meaning of this section, and in each of the cases enumerated herein such contracts shall be valid and enforceable obligations against the municipality.~~

## FULL TEXT OF MEASURE H (CONTINUED)

### **SECTION 94.1: JOB ORDER CONTRACTS**

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding public works contracts on a unit cost basis for all necessary labor, materials, and equipment provided such contracts are secured on a competitive basis as otherwise required by this Charter. The City Council shall establish by ordinance guidelines for the award and use of such unit cost contracts, and may set an amount below which the City Manager may award such contracts.~~

### **SECTION 94.2: DESIGN-BUILD CONTRACTS**

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding contracts for the combined design and construction of public works pursuant to a process of competitive negotiation, provided the process of competitive negotiation is conducted as may otherwise be required by this Charter or the Municipal Code. The City Council shall establish by ordinance guidelines for the award, use, and evaluation of such design-build contracts, and may set an amount below which the City Manager may award such contracts.~~

### **SECTION 94.3: BOND REIMBURSEMENT PROGRAM**

~~Nothing in this charter shall prohibit the City Council from creating a program by ordinance to reimburse contractors for all or a portion of the premium paid by a contractor for a surety bond required under Section 94 of this Charter. If it creates a bond reimbursement program, the Council shall by ordinance establish eligibility criteria for contractors, levels and thresholds of reimbursement, the process for seeking reimbursement, and other requirements for operation of, and participation in, the program.~~

### **SECTION 94.4: CONSTRUCTION MANAGER AT RISK CONTRACTS**

~~Notwithstanding any provisions of this Charter to the contrary, the City is not prohibited from awarding contracts for the construction of public works using a combination of: (1) design review and management services; and (2) construction management services procured from a single person or entity for a guaranteed maximum price pursuant to a process of competitive negotiation, provided the process of competitive negotiation is conducted as may otherwise be required by this Charter or the Municipal Code. The City Council shall establish by ordinance guidelines for the award, use, and evaluation of such construction manager at risk contracts, and may set an amount below which the City Manager may award such contracts.~~

### **SECTION 97:            NO COLLUSION IN BIDDING**

If at any time it shall be found that any party or parties to whom a contract has been awarded has, in presenting any bid or bids, been guilty of collusion with any party or parties in the submission of any bid or for the purpose of preventing any other bid being made, then the contracts so awarded may be declared null and void by the Council and the Council shall thereupon re-advertise for new bids for said work or the incomplete portion thereof. The Council shall debar from future bidding all persons or firms found to be in violation of this Section, or any future firm in which such person is financially interested.



## FULL TEXT OF MEASURE H (CONTINUED)

### SECTION 98: ~~ALTERATION IN CONTRACTS~~

~~Whenever it becomes necessary in the opinion of the City Manager to make alterations in any contract entered into by the City, such alterations shall be made only when authorized by the Council upon written recommendation of the Manager, whenever the cost of such alterations increases the amount of the contract by more than the amount authorized by ordinance passed by the Council. No such alterations, the cost which exceeds the amount authorized by ordinance, shall be valid unless the new price to be paid for any supplies, materials, or work under the altered contract shall have been agreed upon in writing and signed by the contractor and the Manager prior to such authorization by the Council. All other alterations shall be made by agreement in writing between the contractor and the Manager.~~

### SECTION 99: CONTINUING CONTRACTS

The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when the qualified electors of the City, voting at an election for that purpose have indicated their assent as then required by the Constitution of the State of California, such proposition shall be deemed adopted. No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.

### SECTION 100: NO FAVORITISM IN PUBLIC CONTRACTS

~~No officer or employee of the City shall aid or assist a bidder in securing a contract to furnish labor, or material, or supplies at a higher price or rate than that proposed by any other bidder, or shall favor one bidder over another, by giving or withholding information, or shall willfully mislead any bidder in regard to the character of the material or supplies called for, or shall knowingly accept materials or supplies of a quality inferior to that called for by the contract, or shall knowingly certify to a greater amount of labor performed than has actually been performed, or to the receipt of a greater amount of material or supplies than has actually been received. Any officer or employee found guilty of violation of this Section shall forfeit his position immediately.~~

### SECTION 102: CONTINUANCE OF CONTRACTS

All contracts entered into by the City, or for its benefit, prior to the taking effect of the Charter, shall continue in full force and effect. ~~All public work begun prior to the taking effect of the Charter shall be continued thereunder. Public improvements for which legislative steps shall have been taken under laws or Charter provisions existing at the time this Charter takes effect may be carried to completion in accordance with the provisions of such existing laws and Charter provisions.~~

## FULL TEXT OF MEASURE H (CONTINUED)

### SECTION 113: ~~OFFICIAL ADVERTISING~~

~~All official advertising of The City of San Diego shall be done by contract. In June of each odd-numbered year the Purchasing Agent must publish a notice in a daily newspaper of said City for ten days calling for proposals to do all the advertising of said City. The bidder must be the responsible publisher of a newspaper in said City having a bona fide daily circulation and which has been regularly published in said City for at least two years immediately preceding his bid. The award of said advertising shall in all cases be made to the lowest responsible bidder. The newspaper to which the award of advertising is made shall be known and designated as the "City Official Newspaper." "Official advertising," within the meaning of this section shall include only such advertising as shall be required to be published by law.~~

**END OF MEASURE**

# CITY OF SAN DIEGO

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

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## MEASURE I

**CHARTER AMENDMENT REGARDING BALBOA PARK AND SAN DIEGO HIGH SCHOOL.** Shall City Charter section 55 be amended to authorize the City Council to lease the dedicated park property in Balboa Park currently occupied by San Diego High School, to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Charter Amendment Regarding Balboa Park and San Diego High School

#### BALLOT SUMMARY

This measure would amend the San Diego Charter to allow the City Council to approve a lease of dedicated park property in Balboa Park to the San Diego Unified School District for as long as the property is used for a public high school. The San Diego Unified School District's use of the property would be limited to educational, cultural, recreational, and civic programs and activities. The property that the City could lease to the San Diego Unified School District would be limited to the area in Balboa Park that is currently used by San Diego High School, as described in the ordinance approved by the City Council on August 2, 2016, Ordinance O-20721.

#### CITY ATTORNEY'S IMPARTIAL ANALYSIS

San Diego Charter section 55 governs the City's use of dedicated parkland. Dedicated parkland is City-owned property that the City Council or California Legislature has formally set aside for park or recreation purposes forever, either by adopting a Council ordinance or State statute. Balboa Park is dedicated parkland. The City formally set aside and dedicated it as a public park in 1868. The California Legislature approved the dedication in 1870.

Once City-owned property is dedicated as parkland, Charter section 55 requires the City to use that parkland for park or recreation purposes forever. The Charter provides that the City may use dedicated parkland for another purpose that is not park or recreation if that use is approved by two-thirds of the City's voters. A school is not a park or recreation use.

PR-09L0-I-1

N SD 489-082

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

In the 1880s, a school began operating in Balboa Park. Over time, that school became San Diego High School. In 1974, the San Diego Unified School District and the City settled a lawsuit between them concerning San Diego High School. As a result of this settlement, the City leased the property where San Diego High School is located to the San Diego Unified School District for fifty years. The school use in Balboa Park was allowed to continue during the lease. The lease will expire in 2024.

After the lease expires, the City may not lease the property in Balboa Park for a school use again unless one of two things occurs: (1) the school use is approved by two-thirds of the City's voters, under the current language in the Charter, or (2) the Charter is amended by a majority of the City's voters to allow the school use.

This ballot measure follows the second option. If approved by a majority of the City's voters, the measure would amend Charter section 55 by allowing, but not requiring, the City Council to approve a new lease with the San Diego Unified School District for a public high school in Balboa Park. The measure would allow the City to lease the property to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, but the property must be used for a public high school. If approved, the property that could be leased would be limited to the property where San Diego High School is currently located, as described in the 1974 lease and City Council Ordinance O-20721, adopted August 2, 2016.

The City Council initiated this ballot measure and voted to place it on the ballot. If approved, the Charter amendment would become effective after it is chaptered by the California Secretary of State.

## FISCAL IMPACT STATEMENT

This measure would allow the City to authorize a continued lease with the San Diego Unified School District (SDUSD) that would allow San Diego High School to remain in its current location on dedicated parkland in Balboa Park.

There is no expected immediate fiscal impact to this measure, though there may be potential future revenues associated with ongoing rent payments from SDUSD for use of the land, subject to negotiations between the City and SDUSD.

## ARGUMENT IN FAVOR OF MEASURE I

### PROTECT SAN DIEGO HIGH SCHOOL

San Diego High is one of California's oldest schools and has been educating students for more than 130 years. It is San Diego's longest-standing high school and is a cherished part of the city's history.

This measure will ensure the school can continue serving students for generations to come, building on the long history of partnership between the City and San Diego Unified School District (SDUSD).

### VOTE YES! SAVE SAN DIEGO HIGH

- Ensure San Diego High School remains on the site it has occupied since 1882.
- Allow students to continue learning without disrupting their education.
- Maintain public access to campus recreational facilities for local youth sports and community organizations such as Veterans Village of San Diego. San Diego High School's stadium hosts more than 1,000 events annually with nearly 40,000 attendees.
- Continue the maintenance of community facilities by SDUSD at no additional cost to the City of San Diego.

### A NO VOTE WILL LEAVE TAXPAYERS AND OUR KIDS ON THE HOOK!

- Displaces over 2,000 students who would be forced to leave their neighborhood school, resulting in crowded campuses, uncertainty for local families, and larger class sizes in other district high schools.
- Costs taxpayers hundreds of millions of dollars to construct an alternative high school. Given the scarcity of nearby land, SDUSD may be required to condemn homes to acquire land and build a new high school.
- Requires the costly demolition of this century-old facility at taxpayer expense.

### VOTE YES ON MEASURE "I"

[www.savesandiegohigh.com](http://www.savesandiegohigh.com)

#### SUPPORTERS

Assembly Speaker Emeritus Toni Atkins  
State Senator Joel Anderson  
Councilmember Todd Gloria  
Councilmember Scott Sherman  
San Diego Unified School Board & Superintendent Cindy Marten  
Scott Barnett, President TaxpayersAdvocate.org  
7000 San Diego Teachers - SDEA  
San Diego-Imperial Labor Council  
San Diego High School ASB, Alumni Association & Foundation

DAVID ALVAREZ, Councilmember  
City of San Diego

KEVIN FAULCONER, Mayor  
City of San Diego

WILLIAM A. KOWBA, Rear Admiral, USN (ret)  
Chairman, Veterans Village of San Diego Board of Directors

GABRIELA CONTRERAS-MISIRLIOGLU  
President, San Diego High School  
PTSA

LIVIA BORAK  
President, League of Conservation  
Voters San Diego

PR-09L0-I-3

N SD 489-084

## ARGUMENT AGAINST MEASURE I

City Politicians and the School District propose a scheme to give away dedicated Park Lands, reward a Lease breach, and eliminate Charter protections for dedicated Park Lands.

In 1974, competing claims to 34 acres of dedicated Balboa Park Lands were resolved. A Lease and Court Order permitted the District to remain for 50 years, paying a \$200 annual rent. Most importantly the District agreed to vacate Park Lands in 2024, restoring them to park use. The District promised to acquire a non-Park site and build a new campus. In 42 years, the District has breached that obligation, doing nothing to create a new campus.

This Measure eliminates City Charter protections for dedicated Park Lands.

This Measure creates a Land Rush by every for-profit, charter and private school demanding "free land" in Balboa Park. Commercial development could follow.

This Measure gives away 34 acres of dedicated Park Lands, perhaps permanently.

This Measure forces Park users and taxpayers to bail out the wealthy District, reward a Lease breach, and deny future generations use of dedicated Park Lands.

This Measure discloses no details. Is this an absolute gift of priceless dedicated Park Lands to the wealthy School District? Or will this be a brief lease, with significant rents, with income going to a fund earmarked to benefit Balboa Park? The politicians don't disclose any details. They say "Trust Us". That means trouble.

The District has two great sites for a High School, but prefers a gift of your Park Lands. That gift would come at enormous cost to the Park, its future, and the next generations of Park users.

Vote "NO" on the Politician's dangerous give-away scheme.

[ SOHO did not co-author this Statement but joins in opposing Measure "I" as it sets a dangerous precedent weakening Park Land Charter Protections.]

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BRUCE D. COONS, Executive Director, Save Our Heritage Organisation ["SOHO"]

DAVID E. LUNDIN, President, Balboa Park Heritage Association

HAROLD VALDERHAUG, Assistant Chief City Attorney, City of San Diego [Retired]

# FULL TEXT OF MEASURE I

## ARTICLE V

### EXECUTIVE AND ADMINISTRATIVE SERVICE

#### SECTION 55: PARK AND RECREATION

The City Manager shall have the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of City-owned property, golf courses, playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City. The City Council shall by ordinance adopt regulations for the proper use and protection of said park property, cemeteries, playgrounds and recreation facilities, and provide penalties for violations thereof. The Manager is charged with the enforcement of such regulations.

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose. However, real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may be used for any public purpose deemed necessary by the Council.

Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation and cemetery purposes.

The City Council may, without a vote of the people, authorize a lease of the property occupied by San Diego High School to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school. The property occupied by San Diego High School means the area used by the San Diego Unified School District for San Diego High School as of the date this amendment is effective, and further described in the legal description on file with the City Clerk as Document No. OO-20721.

The City Manager shall also have charge of the management, control, preservation, regulation, improvement and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein. At least twenty percent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission and shall be invested in such income-producing securities as the Funds Commission may decide. The principal of the perpetuity fund (subject to such accretion or diminution as may result from investing the same) shall not be available for meeting expenses for maintenance or upkeep of the cemeteries in any manner whatsoever. All income derived from the investment of the moneys in said perpetuity fund, together with the balance of the sale price of said lots not placed in the perpetuity fund, shall be expended in the maintenance and upkeep of the cemeteries and the perpetual care and upkeep of all graves and lots in said cemeteries; provided, however, that if in any one year such income is more than needed for the purpose of such maintenance, upkeep and perpetual care the Council may direct that the excess over and above that needed as above provided may be used for any other municipal purpose. If the income from said investments of said perpetuity fund and the balance of the sale price of said lots each year are not sufficient to maintain the cemeteries and to provide perpetual care and upkeep of all graves and lots in said cemeteries the Council shall annually appropriate from other revenues an amount sufficient to enable the City to provide perpetual care and upkeep of all graves and lots in the cemeteries.

END OF MEASURE

PR-09L0-I-5

N SD 489-086

# CITY OF SAN DIEGO

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

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## MEASURE J

**CHARTER AMENDMENT REGARDING USE OF LEASE REVENUE FROM MISSION BAY PARK.** Shall Charter section 55.2 be amended to: increase, from 25% to 35%, the allocation of annual Mission Bay Park lease revenues exceeding \$20 million, for capital improvements in San Diego Regional Parks; allow Council to add City-owned parkland to Mission Bay Park's boundaries; combine and coordinate construction of Mission Bay Park improvements identified in this section; and extend operation of this section until 2069?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Charter Amendment Regarding Use of Lease Revenue from Mission Bay Park

#### BALLOT SUMMARY

San Diego Charter section 55.2, Mission Bay Park and Regional Parks Improvement Funds, was adopted by voters in 2008. This measure would amend the Charter section to:

- Change the formula for allocating certain lease revenues collected by the City from Mission Bay Park, to increase the amount allocated to the Regional Parks Improvement Fund and to decrease the amount allocated to the Mission Bay Park Improvement Fund;
- Change the process for funding capital improvement projects in Mission Bay Park that are specifically identified in the Charter and allow them to proceed concurrently under certain circumstances;
- Reclassify three of the capital improvement projects from mandatory projects to projects that may be recommended by the Mission Bay Park Improvement Fund Oversight Committee and approved by the City Council;
- Allow the City Council to adopt an ordinance to add contiguous City-owned parkland to Mission Bay Park;
- Extend the Charter section for 30 years past its expiration date, to June 30, 2069; and



## BALLOT SUMMARY (CONTINUED)

- Make other non-substantive revisions, including a statement concerning compliance with state law.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

San Diego Charter section 55.2 provides a formula to divide revenues that the City receives from leases of City-owned property in Mission Bay. The formula requires that the first \$20 million received annually be deposited in the City's General Fund, which is used for municipal purposes. Any additional lease revenues are divided between the Regional Parks Improvement Fund (Regional Parks fund) and the Mission Bay Park Improvement Fund (Mission Bay Park fund). The Regional Parks fund receives the greater of \$2.5 million or 25% of the lease revenues over \$20 million. The Mission Bay Park fund receives the remaining lease revenues or 75% of the revenues over \$20 million.

This measure would increase the allocation of lease revenues to the Regional Parks fund to the greater of \$3.5 million or 35% over the threshold amount, and reduce the allocation to the Mission Bay Park fund accordingly. For example, if the total lease revenue is \$30 million:

- Allocation under the current formula:

General Fund	\$20 million
Regional Parks fund	\$2.5 million
Mission Bay Park fund	\$7.5 million
Total Lease Revenues	\$30 million

- Allocation under the amended formula, if approved by voters:

General Fund	\$20 million
Regional Parks fund	\$3.5 million
Mission Bay Park fund	\$6.5 million
Total Lease Revenues	\$30 million

The Charter requires the Regional Parks fund be used on capital improvements in Regional Parks: Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, coastal beaches and contiguous coastal parks, and future parks serving regional residents and/or visitors, as added according to the Charter.

The Charter requires the Mission Bay Park fund be used for the benefit of the Mission Bay Park Improvement Zone and first be spent on specific projects listed in the Charter. These projects must be completed, in the order set in the Charter, before the City may proceed to the next project. Upon completion of all the specific projects, the fund may be used for capital improvements within the Improvement Zone, as recommended by an Oversight Committee and approved by the Council. The measure would allow the City to potentially undertake multiple priority projects at once.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

The measure would also reclassify the Charter-designated three lowest-priority projects in Mission Bay Park (relating to bike and pedestrian paths, signage, parking lots, landscaping, seawall and bulkhead restoration, and deferred maintenance) from mandatory projects to projects that an Oversight Committee and the Council could recommend for funding with the Mission Bay Park fund.

The Charter section is set to terminate on June 30, 2039. This measure would extend the termination date to June 30, 2069.

Amendments would identify City obligations under state law regarding tidelands within Mission Bay and allow the Council to add certain City-owned parkland to the Charter's definition of Mission Bay Park.

City officials initiated this measure and the Council placed it on the ballot. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

### FISCAL IMPACT STATEMENT

This measure would change the current allocation of lease revenue derived from City-owned property in Mission Bay Park. Currently, the greater of \$2.5 million or 25% of Mission Bay lease revenue over \$20 million is allocated to the City's Regional Parks Improvement Fund with all remaining funds allocated to the Mission Bay Park Improvement Fund. If this measure is approved, the greater of \$3.5 million or 35% of Mission Bay lease revenue over \$20 million would be allocated to the City's Regional Parks Improvement Fund with all remaining funds allocated to the Mission Bay Park Improvement Fund. This change has no fiscal impact beyond shifting certain Mission Bay lease revenues from being used for capital improvements in Mission Bay Park to being used for capital improvements in the City's Regional Parks.

This measure would also clarify the process for completing prioritized capital improvement projects in Mission Bay Park and allow the City to undertake these improvements concurrently.

Additionally, this measure would extend the restricted use of annual Mission Bay lease revenue above \$20 million for an additional 30 years from the current expiration of 2039 to 2069. Without this extension, all Mission Bay lease revenue would become unrestricted and available for general public services in 2040. While it is difficult to accurately project future Mission Bay lease revenue, total projected revenue for Mission Bay Park and Regional Parks under the proposed extension from 2040 to 2069 is roughly \$1.4 billion.

## ARGUMENT IN FAVOR OF MEASURE J

### IMPROVES PARKS WITHOUT RAISING TAXES

Our parks are an invaluable asset for all San Diegans and attract millions of visitors each year. We must protect them. This measure will generate hundreds of millions of dollars for Mission Bay Park, Balboa Park and San Diego's regional parks – without new taxes.

Prop J guarantees that the majority of revenues generated in Mission Bay Park from hotels and leases, over a threshold, are directed to improving Mission Bay Park and other major parks for an additional 30 years – ensuring San Diego's environment and park system are sustained for future generations.

### KEEPS MISSION BAY CLEAN, SUPPORTS TOURISM

Mission Bay Park provides countless recreational opportunities for families and visitors – strengthening San Diego's neighborhoods and tourism economy. Keeping the bay clean and safe is essential to San Diego's continued prosperity and quality of life.

This measure will fund important projects such as new playgrounds, bike paths and trails, preserve and restore environmentally sensitive habitats, expand wetlands and improve water channels to increase boating safety.

### REPAIRS BALBOA PARK AND PARKS ACROSS SAN DIEGO

Prop J will revitalize San Diego's iconic and cherished regional parks. It will allocate funds to preserve Balboa Park, including historic structures that are in need of critical repairs. Parks throughout San Diego that will benefit from more public funding include:

- Chicano Park
- Chollas Lake Park
- Mission Trails Regional Park
- Otay River Valley Park
- Presidio Park
- San Diego River Park
- Torrey Pines City Park
- Open space parks and coastal beaches

### CONTINUES REFORM AND INDEPENDENT OVERSIGHT

Prop J keeps money generated by Mission Bay in Mission Bay and regional parks.

It is a charter amendment that cannot be waived by politicians. An independent oversight committee ensures funds will be spent only for improving our parks.

### Vote "YES" on J to Protect Our Parks and Mission Bay

KEVIN L. FAULCONER  
Mayor, City of San Diego

TODD GLORIA  
San Diego City  
Councilmember

LORIE ZAPF  
San Diego City Councilmember

PAUL ROBINSON  
Chair of Mission Bay Park Committee

BETTY PEABODY  
Founder of Friends of  
Balboa Park

## ARGUMENT AGAINST MEASURE J

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

FULL TEXT OF MEASURE J

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 55.2: MISSION BAY PARK AND REGIONAL PARKS  
IMPROVEMENT FUNDS

(a) For the purpose of this Section, the following definitions shall apply and the words shall appear in italics:

(1)-(2) [No change in text.]

(3) *Mission Bay Park* means the area described in the Mission Bay Park Record of Survey 16891, filed on February 28, 2001, in the Office of the County Recorder as File No. 2001-0113422, and any City-owned property heretofore or hereafter dedicated for park purposes that is contiguous to Mission Bay Park and has been determined by ordinance of the City Council to be part of Mission Bay Park for purposes of this Charter section 55.2.

(4)-(11) [No change in text.]

(b) Subject to the City of San Diego's State law obligations as a trustee of tidelands within Mission Bay Park, Mission Bay Park Lease Revenues up to the threshold amount in each fiscal year shall be deposited into the San Diego General Fund and may be used for any municipal purpose, including but not limited to, police, fire, streets, sewers, water delivery, roads, bridges, and operation of parks. All *Mission Bay Park Lease Revenues* in excess of the threshold amount shall be allocated in the City of San Diego budget to two distinct funds. ~~Twenty~~Thirty-five percent (~~23~~35%) of the *Mission Bay Park Lease Revenues* in excess of the threshold amount, or ~~two~~three million five hundred thousand dollars (\$23,500,000) whichever is greater, shall be allocated to the *San Diego Regional Parks Improvement Fund* that solely benefits the *San Diego Regional Parks* and ~~seventy~~sixty-five percent (~~76~~65%) of the *Mission Bay Park Lease Revenues* over the threshold amount, or the remainder of those revenues if less than ~~76~~65% is available after the allocation to the *San Diego Regional Parks Improvement Fund*, shall be allocated to the *Mission Bay Park Improvement Fund* that solely benefits the *Mission Bay Park Improvement Zone*. The threshold amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.

(c) Funds in the *Mission Bay Park Improvement Fund* may be expended only in the *Mission Bay Park Improvement Zone*, to restore wetlands, wildlife habitat, and other environmental assets within the *Mission Bay Park Improvement Zone*; to preserve the beneficial uses of the *Mission Bay Park Improvement Zone* including, but not limited to, water quality, boating, swimming, fishing, and picnicking by maintaining navigable waters and eliminating navigational hazards; to restore embankments and other erosion control features; and to improve the conditions of the *Mission Bay Park Improvement Zone* for the benefit and enjoyment of residents and visitors, consistent with the *Mission Bay Park Master Plan*.

## FULL TEXT OF MEASURE J (CONTINUED)

(1) To achieve these goals, all of the following identified priorities are intended to be authorized, funded, and completed have a funding plan adopted by City Council, and proceed to completion in the order provided below, subject to section (c)(2) below authorizing projects to proceed concurrently:

(A) Restoration of navigable waters within *Mission Bay Park* and elimination of navigational hazards. When depth conditions no longer support and ensure safe navigation, those areas that pose a danger or impede the passage of watercraft shall be dredged in accordance with the *Mission Bay Baseline Chart*.

(B) Wetland expansion and water quality improvements and the protection and expansion of eelgrass beds as identified in the *Mission Bay Park Master Plan*.

(C) Restoration of shoreline treatments within the *Mission Bay Park Improvement Zone* including restoration of beach sand and stabilization of erosion control features.

(D) Expansion of endangered or threatened species preserves and upland habitats on North Fiesta Island and along the levee of the San Diego River floodway as identified in the *Mission Bay Park Master Plan*.

(E) Deferred maintenance projects that are also Capital Improvements within the Mission Bay Park Improvement Zone as may be recommended by the Mission Bay Park Improvement Fund Oversight Committee and approved by the City Council such as, but not limited to, completion of bicycle and pedestrian paths and bridges as identified in the Mission Bay Park Master Plan, installation of sustainable lighting in the Mission Bay Park Improvement Zone, installation of signage and landscaping at points of entry to Mission Bay Park and the South Shores, and the repair, resurfacing and restriping of parking lots within the Mission Bay Park Improvement Zone, the repair of playgrounds and comfort stations, and the restoration of the seawall and bulkhead on Oceanfront Walk to a condition no less than the quality of restoration previously performed in 1998 from Thomas Street to Pacific Beach Drive or to conditions as may be required by historic standards.

~~(F) Restoration of the seawall bulkhead on Oceanfront Walk to a condition no less than the quality of restoration previously performed in 1998 from Thomas Street to Pacific Beach Drive or to conditions as may be required by historic standards.~~

~~(G) Deferred maintenance that are also Capital Improvements hereunder on existing assets within the Mission Bay Improvement Zone as may be recommended by the Mission Bay Park Improvement Fund Oversight Committee and approved by the City Council.~~

(2) After each priority project identified in (c)(1)(A-G) above has been budgeted and approved by the City Council and authorized and has a funding plan adopted for it by City Council, funds may be committed to and expended on a subsequent project of a lesser priority and construction of a subsequent project may proceed concurrently with a greater priority project provided construction of a lesser priority project does not unreasonably delay, prolong, or preclude completion of a greater priority project. To the extent funds become available from grants or other sources for a lower priority before a higher priority has been completed, or in the event of substantial delay in proceeding with a higher priority, funds may be committed to the next lower priority in the order set forth in (c)(1)(A-G), provided such expenditure of a lesser priority does

## FULL TEXT OF MEASURE J (CONTINUED)

~~not unreasonably delay, prolong, or preclude completion of a greater priority.~~ The City Council shall be required to make findings that completion of a ~~higher~~greater priority project will not be ~~unreasonably delayed, prolonged, or precluded~~ by expending funds on a ~~lower~~lesser priority project before approving said expenditure.

(3) Once the projects identified in (c)(1)(A-GE) ~~have been fully budgeted or an adopted funding plan or a project is completed~~, additional projects shall be prioritized and funded only for *Capital Improvements* as identified in the *Mission Bay Park Master Plan*, recommended by the *Mission Bay Park Improvement Fund Oversight Committee*, and approved by the City Council.

(4) To the extent items (c)(1)(A-GE) ~~that have been completed herein require additional funding or~~ are later in need of additional *Capital Improvements*, then those items shall again have priority over other *Capital Improvements* only if approved by the City Council.

(5) Except as may be specifically authorized above in this subsection, funds in the *Mission Bay Park Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on costs that cannot be capitalized; or on daily, weekly, monthly, or annual upkeep of the *Mission Bay Park Improvement Zone* and there shall be no expenditure for contracted labor or services or for city employee salaries, pensions or benefits unless those expenses can be capitalized, and only then at the then-standard rates used by the City of San Diego for all other capital improvement projects.

(d) [No change in text.]

(e) The *Mission Bay Park Improvement Fund Oversight Committee* and the *San Diego Regional Parks Improvement Fund Oversight Committee* shall meet at least quarterly to audit and review the implementation of this Charter Section, to recommend priorities for expenditures and *Capital Improvements* hereunder in accordance with the master plans for each of the *San Diego Regional Parks* or with the *Mission Bay Park Master Plan* or within the priorities identified in (c)(1)(A-GE), as applicable; and to verify that the appropriate funds are collected, segregated, retained and allocated according to the intent of this Section, and spent as prioritized in this Section and consistent herewith.

The San Diego City Auditor, in cooperation with each committee, shall establish and oversee a mechanism to ensure public accountability by effectively reporting and communicating the extent and nature of revenues, expenses and improvements generated hereunder and compliance with the requirements outlined herein. This shall include, at a minimum, an annual audit report to the Mayor, City Council and public. Each report shall, at a minimum, contain a complete accounting of all revenues received, the amount and nature of all expenditures, a report as to whether in each committee's view the expenditures have been consistent with the priorities and provisions hereof, whether the City of San Diego has complied with sections (c)(2), (d), (f), (g) and (h). In the event that either committee finds that there has been a violation of this Charter Section by the City of San Diego, it should set forth the alleged violation in a written communication to the City Manager and members of the San Diego City Council. If the alleged violation is not resolved to the satisfaction of the aggrieved committee within 30 days, the San Diego City Council shall docket an action item for a

PR-09L0-J-7

N SD 489-093

**FULL TEXT OF MEASURE J (CONTINUED)**

public meeting of the San Diego City Council within 60 days. If evidence presented to the San Diego City Council by the aggrieved committee establishes a violation of this Section, the San Diego City Council shall forthwith cure the violation including but not limited to the restoration of inappropriately expended funds.

(f)-(i) [No change in text.]

(j) This Section shall take effect and be in force on July 1, 2009, and will expire on June 30, 20369. Before the expiration of this Section, the City Council shall place on the ballot no later than the last regularly scheduled election prior to June 30, 20369 a measure to amend the Charter to extend the effect of this Section for an additional 30 years.

(k) [No change in text.]

**END OF MEASURE**

# CITY OF SAN DIEGO

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

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## MEASURE K

**CHARTER AMENDMENT REQUIRING RUN-OFF ELECTION FOR THE OFFICES OF MAYOR, CITY ATTORNEY AND COUNCILMEMBER.** Shall the Charter be amended to eliminate the provision that elects a candidate for Mayor, City Attorney, or Councilmember to office if the candidate receives a majority vote in the June primary election, and instead require a run-off election at the November general election between the two candidates who received the most votes in the primary election?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Amendments to the San Diego City Charter to Require Run-off Elections for the Offices of Mayor, City Attorney and Councilmembers

#### BALLOT SUMMARY

This measure would amend the San Diego City Charter to eliminate the provision that elects a candidate to a City office – the Mayor, City Attorney or a Councilmember – if the candidate receives more than 50% of the vote in the June primary election. Instead, the proposed amendments would require a November run-off election between the two candidates who received the most votes in the primary election, even if one candidate received a majority vote.

The proposed amendment is legally untested. The current procedure follows the California Elections Code provision for elections of non-partisan officers. The California Elections Code is used by general law cities, but Charter cities like San Diego can adopt their own election laws.

If the amendment is approved, an exception would be made if only one candidate qualified for the June primary for a particular seat. The one qualified candidate potentially could be a write-in candidate, as qualified write-in candidates are allowed to run in primary, but not general, elections.

The Charter currently provides that if a candidate for Mayor, City Attorney, or Councilmember receives more than 50% of the vote in the June primary election, the candidate is deemed elected to the seat. Once the results are certified, the candidate would assume office at the beginning of the next term in December. If no candidate received 50% of the primary vote, the two candidates with the most votes in the primary would advance to the November general election.

PR-09L0-K-1

N SD 489-095



## BALLOT SUMMARY (CONTINUED)

Candidates in the run-off election would face the same electorate in the general election as they did in the primary – either a citywide vote, in the case of the Mayor and City Attorney, or a district-only vote, in the case of a particular Councilmember.

The City Council placed the measure on the ballot. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

The California Constitution grants authority to Charter cities like San Diego to establish their own election procedures.

The Charter provides that if a candidate for Mayor, City Attorney, or Councilmember receives more than 50% of the vote in the June primary election, the candidate is deemed elected to the seat. If no candidate receives 50% of the vote in the primary election, the two candidates receiving the most votes in the primary advance to a November general election.

This procedure follows the California Elections Code provisions for non-partisan elections. San Diego's candidate elections are non-partisan.

This measure would make a substantive change to the way City officials are elected to office, eliminating the ability of a candidate to win a seat outright in the June primary election if the candidate receives more than 50% of the vote. This year, for example, candidates for Mayor and Councilmember for Districts 3, 5, and 7, respectively, each won their elections with more than 50% of the primary vote and will not face a November ballot.

If approved, run-off elections will be required to elect all City officials, regardless of the percentage of votes candidates received in the primary election. Amendments would require a second election that would not have been held under current law if a candidate received a majority vote in the primary.

Candidates in the run-off election would face the same electorate in the general election as they did in the primary – a citywide vote, for Mayor and City Attorney, or a district-only vote, for a Councilmember.

Amendments would provide an exception if only one candidate qualified to run in the June primary for a particular office. This could be a write-in candidate, as qualified write-in candidates are allowed to run in primary, but not general, elections. The sole qualified candidate receiving votes in the primary would be deemed elected.

The proposal appears to be modeled on the California Open Primary law, but is distinguishable. San Diego's municipal offices are technically non-partisan offices and ballot materials cannot list political party affiliations. California's law allows all candidates for a partisan office to be listed on a single primary ballot, along with their party preferences. The Open Primary allows voters to vote for any candidate without regard to party preference of the candidate or voter, and the top two vote-getters then advance to a November runoff election.

The amendment sending a municipal candidate to a November runoff after the candidate has won a majority vote in a non-partisan primary has not been legally tested.

The proposed amendment would not follow the California Elections Code. Charter cities are not required to follow the California Elections Code, which states that non-partisan candidates who receive a majority vote at a primary election shall be elected to that office, and that office shall not appear on the ballot at the ensuing general election.

General law cities are required to follow the California Elections Code. Charter cities may choose to adopt the code or may adopt other election procedures.

## FISCAL IMPACT STATEMENT

This measure would require all the election process for elected City offices to consist of a primary election in June among all candidates for a particular office, and a run-off election in November for the top-two vote-getters in the June primary election. At present, if a candidate for office wins a majority of votes cast during the June primary election, that candidate wins the office outright and no run-off election in November is required.

The measure would increase the cost of the City's November elections by requiring additional ballot materials and vote tabulations for run-off elections that would not be required under the City's current elections process.

Had this measure been in effect during the past four election cycles in 2008, 2010, 2012, and 2014, election costs would have increased between \$30,000 and \$260,000 in each election. A similar range of increased costs in future elections could be anticipated if this measure is adopted.

## ARGUMENT IN FAVOR OF MEASURE K

### VOTE YES ON MEASURE K MORE VOTERS = BETTER DECISIONS

Measure K ensures all elections for mayor, city attorney and city council are decided in November general elections, when more people vote.

#### MEASURE K ENSURES CITY LEADERS ARE ELECTED BY A MAJORITY OF VOTERS

- The city's current system allows candidates to win election in the June primary with votes from a small fraction of the people they represent, when as few as 20 percent of voters cast ballots. Measure K ensures final decisions are made in November, when as many as 80 percent of voters cast ballots.

#### MEASURE K IS CONSISTENT WITH THE STATE AND FEDERAL ELECTION PROCESS

- Measure K uses the same top-two runoff process we use to elect the Governor, state legislators, and members of Congress, eliminating confusion caused by using a different process for city elections.

#### MEASURE K GIVES VOTERS – NOT SPECIAL INTERESTS – POWER TO CHOOSE CITY LEADERS

- The city's current system gives political parties and special interests -- with the power of their money and endorsements -- more influence in the June election, and leaves many voters out of the process. Measure K returns power to the voters and ensures that city leaders are elected by and are accountable to the majority of the people they represent.

#### MEASURE K PROTECTS TAXPAYERS

- By ensuring city leaders are accountable to a majority of the people they represent, Measure K protects taxpayers from spending schemes that favor small special interest groups -- and it costs just a few cents more per voter than the current system.

#### THAT'S WHY MEASURE K IS ENDORSED BY TAXPAYERS, COMMUNITY LEADERS, ELECTION EXPERTS AND GOOD GOVERNMENT ADVOCATES.

YesOnKandL.org

SHERRI LIGHTNER  
San Diego City Council President

SCOTT BARNETT  
President  
San Diego Taxpayers Advocate

CHUCK ABDELNOUR  
Retired San Diego City Clerk and  
Chief Elections Officer

REV. J. LEE HILL JR.  
President, San Diego County  
Interdenominational Ministerial  
Alliance

ALAN ARROLLADO  
President  
San Diego City Fire Fighters, Local 145

## ARGUMENT AGAINST MEASURE K

### Vote **No** on Measure K

*It's rushed, lacked public involvement and takes millions from our neighborhoods*

#### **Eliminating the 50% victory rule will cost the City millions of dollars.**

This change to the City Charter would require the City to conduct additional elections, at great expense to taxpayers, even if a candidate earned 99% of the vote. This simply does not make sense.

#### **No other California cities use the election system proposed by this measure.**

Of the 482 cities in California, **ZERO** use the type of election process proposed here. We should not be gambling with an untested system. Even more concerning, no other alternatives were studied. The most common forms of elections used by California cities were not even considered.

#### **Rushed without sufficient public input or community outreach.**

We should be extremely cautious when making dramatic changes to our democratic election processes. Traditionally, cities that make changes to their elections carefully study proposals and conduct outreach to hear from all communities. With this measure, none of that occurred. It was rushed through in a matter of days. **Even the City Attorney's office stated it did not have sufficient time to analyze potential legal issues regarding the California and Federal Voter Rights Act.**

#### **Doesn't guarantee more voter interest**

A more effective way to maximize voter participation would be to have just one election. That is why almost 92% of California cities use a plurality system. But that's **not** what this measure does. It requires taxpayers to spend millions on multiple elections, even if a candidate wins a majority of the vote in a high-voter turnout election.

San Diego deserves better. Measure K was rushed, has not undergone thorough legal review and will take millions away from streets and public safety. Vote No and support more effective alternatives to increase voter turnout.

AIMEE FAUCETT  
San Diego Regional Chamber  
of Commerce

CHRIS CATE  
Councilmember

MAYOR KEVIN L. FAULCONER

SCOTT SHERMAN  
Councilmember

LORIE ZAPF  
Councilmember

## **FULL TEXT OF MEASURE K (CONTINUED)**

After the result of an election for any office is declared, or when an appointment is made, the City Clerk, under his or her hand and official seal, shall issue a certificate therefor, and shall deliver the same immediately to the person elected or appointed, and such person must within ten days after receiving such certificate file his official bond, if one be required for his office, and take and subscribe to the oath of office required of him by this Charter, which oath must be filed with the City Clerk.

**END OF MEASURE**

# CITY OF SAN DIEGO

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

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## MEASURE L

**CHARTER AMENDMENT REQUIRING CITIZENS' INITIATIVE AND REFERENDUM MEASURES TO BE PLACED ON NOVEMBER GENERAL ELECTION BALLOTS, UNLESS THE COUNCIL DECIDES TO SUBMIT THEM TO VOTERS EARLIER.** Shall the Charter be amended to require qualified citizens' initiative and referendum measures to be submitted to voters on the next November general election ballot and not at a June primary election, unless the Council chooses to submit the measure to voters prior to that election?

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

Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Amendments to the San Diego City Charter Regarding the Timing of Elections for Citizens' Initiative Measures and Referendum Measures

#### BALLOT SUMMARY

The California Constitution and San Diego Charter reserve the powers of initiative and referendum to the people of San Diego. If a sufficient number of registered voters sign petitions, an initiative or referendum measure will qualify for the ballot.

The San Diego Charter directs that the procedure for the exercise by the people of the power of initiative and referendum must be "expeditious."

San Diego's election laws provide that citizens' initiative and referendum measures that qualify for the ballot must be submitted to voters at the next citywide election on which the measure could be heard, or at a special, stand-alone election held prior to that time. These provisions are in the San Diego Municipal Code and must also follow the Charter requirement of an "expeditious" process.

This measure would add language to the San Diego Charter requiring citizens' initiative and referendum measures to be submitted to voters on the next November general election ballot and not at a June primary election, unless the City Council decides to submit a particular measure to voters on an earlier ballot.

## BALLOT SUMMARY (CONTINUED)

In the case of a measure that qualifies for a June ballot but must wait until November, the amendments would give the City Council the power to decide if it would be heard sooner, but the Council would not be required to consider the option. If this involves a referendum measure, the legislative act at issue is stayed until after the vote. In such a circumstance, the amendments thus could result in a longer stay of a legislative act.

The City Council voted to place this measure on the ballot. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

The California Constitution grants authority to Charter cities like San Diego to establish procedures for their own elections. The San Diego Charter and Municipal Code thus govern elections for City ballot measures.

This Charter amendment measure would make a substantive change to the timing of the City's elections for citizens' initiative and referendum measures.

The California Constitution and San Diego Charter reserve to the people the powers of initiative and referendum. An initiative or referendum measure will qualify for the ballot if a sufficient number of registered voters have signed petitions to qualify the measure.

San Diego's election laws currently require all initiative and referendum measures that qualify for the ballot to be placed on the next citywide ballot on which the measure can be heard. The next available ballot could be either the City's June primary or the November general election, both of which are held on the same dates as statewide elections, in even-numbered years. The Council also may call a separate, stand-alone election to have a measure heard prior to the next citywide election. These laws are in the City's Municipal Code.

The Charter states that the City's procedures for the people's exercise of their constitutional powers of initiative and referendum are to be "expeditious." The "expeditious" provision has been legally interpreted to require initiative and referendum measures to be submitted to voters at the next available citywide election. The Charter does not include any other direction regarding the timing of ballot measure elections.

If the measure is approved, the Charter would require citizens' initiative and referendum measures to be placed on November general election ballots. This means that an initiative or referendum measure that qualifies in time to be heard for the June ballot would not be heard at that time, but in November. The amendments would give the Council the power to decide if a qualified initiative or referendum measure would be submitted to voters earlier, either at the June election or a separate stand-alone election; however, the Council is not required to consider that option.

In the case of a referendum, the legislative act at issue is stayed until after the vote. If a measure qualifies in time to be heard in June but must wait for November, the legislative act would be stayed longer.

The amendments would state that the new procedure complies with the Charter's requirement of an "expeditious" process for the people's exercise of the constitutional powers of initiative and referendum.

Citizens' measures, resulting from a signature-gathering effort, are the only measures affected. The requirement would not apply to measures initiated by City officials or a Charter Review Commission. Amendments would clarify that all other municipal ballot measures may be submitted to voters at the next citywide Municipal Primary Election or Municipal General Election, or at any City-wide special election held for that purpose.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

The California Constitution now requires statewide initiative and referendum measures to be submitted to voters at the next general election, or any special statewide election held earlier.

### FISCAL IMPACT STATEMENT

This measure would require citizens' initiatives and referenda to be placed on the City's November General Election ballot. At present, initiatives and referenda can be placed on either the City's November General Election ballot or the City's June Primary ballot.

This measure would shift all ballot costs associated with initiatives and referenda to November. There is no net fiscal impact associated with this measure.



# FULL TEXT OF MEASURE L

## ARTICLE III

### LEGISLATIVE POWER

#### SECTION 23: INITIATIVE, REFERENDUM AND RECALL

The right to recall municipal officers and the powers of the initiative and referendum are hereby reserved to the people of the City. Ordinances may be initiated; and referendum may be exercised on any ordinance passed by the Council except an ordinance which by the provisions of this Charter takes effect immediately upon its passage; and any elective officer may be recalled from office. The Council shall include in the election code ordinance required to be adopted by Section 8, Article II, of this charter, an expeditious and complete procedure for the exercise by the people of the initiative, referendum and recall, including forms of petitions; provided that the number of signatures necessary on petitions for the initiation of an ordinance for the consideration of the Council shall be three percent of the registered voters of the City at the last general City election; that for the direct submission of a measure to the people it shall require a petition signed by ten per cent of the registered voters of the City at the last general City election; that for a referendum upon an ordinance passed by the Council it shall require a petition signed by five per cent of the registered voters of the City at the last general election; and that for the recall of an elected officer who is elected by all of the electors of the City, it shall require a petition signed by fifteen per cent of the registered voters of the City at the last general City election; and that for the recall of a Council member other than the Mayor it shall require a petition signed by fifteen percent of the registered voters of the Councilmanic District at the last general City election.

Initiative measures and referendum measures that qualify for the ballot after the people's petition process, and in compliance with provisions of this Charter and the City's Election Code Ordinance, shall be submitted to the electorate at a Municipal Special Election consolidated with the next City-wide Municipal General Election ballot on which the measures legally can be placed, or at a City-wide Municipal Special Election held prior to that general election.

Submission of such measures to a general election ballot shall be considered to meet the Charter requirement of an expeditious procedure for the people's exercise of their constitutionally reserved powers of initiative and referendum.

All other municipal ballot measures may be submitted to the electorate at a Municipal Special Election that may be consolidated with the next City-wide Municipal Primary Election or Municipal General Election, or at any City-wide special election held for that purpose.

Charter amendment measures and the timing of their submission to the electorate are governed by California law.

END OF MEASURE

# CITY OF SAN DIEGO

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

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## MEASURE M

### **AFFORDABLE HOUSING: INCREASING THE LIMIT ON THE NUMBER OF UNITS THE CITY AND CERTAIN PUBLIC AGENCIES ARE ALLOWED TO HELP DEVELOP.**

Shall the voters increase by 38,680 the maximum number of housing units the City and certain other public agencies are allowed to help develop, construct, or acquire for people with low incomes, without this ballot measure approving specific housing units, providing funds for development, removing requirements that otherwise apply, or taking any other action?

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

Full text of this measure follows the argument.

## OFFICIAL TITLE AND SUMMARY

### BALLOT TITLE

Affordable Housing: Increasing the Limit on the Number of Units the City and Certain Public Agencies Are Allowed to Help Develop.

### BALLOT SUMMARY

Certain public agencies (including the City of San Diego, the Housing Authority of the City of San Diego, and the San Diego Housing Commission) are not allowed to help develop affordable housing units unless voters provide permission to do so. Specifically, without voter approval, public agencies may not provide assistance, financial or otherwise, to help "develop, construct, or acquire" housing units for people who lack the income necessary to live in "decent, safe, and sanitary dwellings, without overcrowding." California voters approved this rule by ballot measure in 1950, which incorporated the rule into the California Constitution.

Only a majority of qualified voters can grant the agencies this authority regarding affordable housing. The law does not require separate voter approval to develop, construct, or acquire individual units, however; voters may approve a maximum number of units to satisfy the constitutional requirement. In previous elections (1972, 1976, 1981, and 2002), voters approved such increases. As a result, the total limit is currently 10,500 units. Of this limit, approximately 3,247 units remain at this time: the City is approaching the limit.

## BALLOT SUMMARY (CONTINUED)

Voter approval of this measure would provide an increase of 38,680 units. Voters are being asked to approve that number because the San Diego region's most recent Regional Housing Needs Assessment (a report required by the state) concluded that 38,680 more affordable housing units will be needed in the City by 2020 for people earning low and very low incomes.

If approved, this measure would change the numerical limit for affordable housing units by increasing by 38,680 the maximum number of housing units the City and certain other public agencies could help develop. This measure would not take any other action.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

Under existing law, the City of San Diego and certain other public agencies will be allowed to help develop, construct, or acquire approximately 3,247 affordable housing units in the City for people with low incomes.

If this measure is approved by voters, the agencies would be allowed to help develop, construct, or acquire up to 38,680 units more than the current limit. If the measure is not approved, the agencies would be prohibited from helping to develop, construct, or acquire any more units than the current limit.

This measure would have no other effect on existing law.

This measure would not create an obligation to build any specific housing units. It would not grant approval for any particular development. It would not identify locations for the housing units.

This measure would not require public agencies to provide funding for the units or change any applicable regulations and processes regarding funding. It would not raise taxes.

This measure would not remove any requirements that otherwise might apply to the development of any particular project, such as requirements to obtain permits or analyze a project's impact on the environment.

The City Council of the City of San Diego placed this measure on the ballot for voter consideration after hearing a report from the San Diego Housing Commission that the City is approaching the current affordable housing unit limit.

### FISCAL IMPACT STATEMENT

Article 34 of the California Constitution requires voter approval for the development, construction, or acquisition of a low rent housing project by a State public body, such as the City. The City is approximately 3,247 units away from reaching its current limit of 10,500 units. If approved, this measure would increase the limit on the number of affordable housing units the City is able to develop, construct, or acquire by 38,680 units, from 10,500 to 49,180. The increase of 38,680 units is based on a San Diego Association of Governments (SANDAG) Regional Housing Needs Assessment (RHNA), which identified it as the number of low and very low income units needed in the City by 2020. Coupled with the 3,247 units of remaining capacity, the additional 38,680 units would provide the City with a total remaining capacity of 41,927 units. If the City needs to increase its remaining capacity beyond the 41,927 units, it would be required to return to the voters for approval again.

Approval of this measure would not raise taxes or authorize the expenditure of any funds. It also would not require or approve the development of specific affordable housing units. None of the City's requirements for affordable housing projects would be eliminated, waived, or reduced. Affordable housing developments would still need to obtain appropriate permits, and go through the City's standard public review process.

There is no fiscal impact associated with this ballot measure.

PR-09L0-M-2

N SD 489-108

## ARGUMENT IN FAVOR OF MEASURE M

There is a shortage of affordable housing in the City of San Diego for low-income families, military veterans, seniors, and individuals with disabilities.

This ballot measure, if approved, would allow the capacity to construct an additional 38,680 affordable rental housing units without raising taxes.

Please vote YES on Proposition M.

Here are the facts:

- The City of San Diego needs an additional 38,680 affordable housing units for low-income residents by 2020, according to the 2011 San Diego Association of Governments' Regional Housing Needs Assessment.
- Without voter approval, it is possible that the construction of low-income housing units supported by government financing or assistance could be halted in the City of San Diego.
- Affordable housing developments will still have to go through the permitting process, including community, environmental and San Diego City Council reviews.
- This measure does not guarantee that these units will automatically be built.
- Passage of this measure does not raise taxes.

Background: Article 34 of the California State Constitution, adopted in 1950, requires that local voters authorize the development, construction, or acquisition of low-rent housing by a State public agency, such as the City of San Diego.

Voters approved four prior ballot measures (1972, 1976, 1981 and 2002) that authorized a total capacity of up to 10,500 affordable units in the City of San Diego, but the limit is approaching, with only 3,247 units of capacity left. Passage of this ballot measure would add 38,680 sorely needed units to the capacity, for a total remaining of 41,927.

Please vote YES on Proposition M.

TODD GLORIA  
City Councilmember  
City of San Diego

AIMEE FAUCETT  
Executive Vice President & COO  
San Diego Regional Chamber of Commerce

HANEY HONG  
President & CEO  
San Diego County  
Taxpayers' Association

JEANNE BROWN  
President  
San Diego League of Women Voters

KEVIN FAULCONER  
Mayor  
City of San Diego

## ARGUMENT AGAINST MEASURE M

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

**FULL TEXT OF MEASURE M**

**AFFORDABLE HOUSING: INCREASING THE LIMIT ON THE NUMBER OF UNITS THE CITY AND CERTAIN PUBLIC AGENCIES ARE ALLOWED TO HELP DEVELOP.**

The voters approve increasing by 38,680 the maximum number of housing units the City and certain other public agencies are allowed to help develop, construct, or acquire for people with low incomes. Increasing this limit does not approve specific housing units, provide funds for development, remove requirements that otherwise apply, or take any other action regarding specific housing units.

**END OF MEASURE**

# CITY OF SAN DIEGO

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

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## MEASURE N

**NON-MEDICAL CANNABIS BUSINESS TAX.** If California voters approve Proposition 64 legalizing marijuana in the state, shall the City adopt an ordinance imposing a gross receipts tax, for general revenue purposes, on non-medical cannabis (also known as marijuana) businesses operating in the City, initially set at 5% and increasing to 8% on July 1, 2019, having a maximum rate of 15%, generating an undetermined amount of revenue and continuing indefinitely?

---

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

Full text of this measure follows the arguments.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Non-Medical Cannabis Business Tax

#### BALLOT SUMMARY

This measure would amend the San Diego Municipal Code to authorize the City to impose a tax of up to 15% on the gross receipts of non-medical cannabis businesses operating in the City of San Diego. Cannabis is also known as marijuana. This tax would only be imposed if voters also approve a statewide initiative, Proposition 64, Marijuana Legalization Initiative Statute, which also appears on the November 8, 2016 ballot.

### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This measure seeks voter approval to allow the City of San Diego to impose a new Cannabis Business Tax of up to 15% on the gross receipts of non-medical (recreational) cannabis businesses operating in the City. Cannabis is also known as marijuana.

This tax would be imposed only if such businesses become legal in the State of California, if California voters also approve Proposition 64, the Marijuana Legalization Initiative Statute, on the November 8, 2016 statewide ballot.

Existing state law does not authorize the sale of non-medical cannabis. This measure does not permit businesses to engage in activities that are otherwise illegal. The City also does not currently permit non-medical cannabis businesses to locate or operate in the City.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS (CONTINUED)

If approved by voters, the City measure would amend the San Diego Municipal Code by adding a new Article 4 to Chapter 3 of the San Diego Municipal Code to allow the City to impose the tax.

Cannabis businesses are defined in the ordinance as businesses involved in the distribution, delivery, dispensing, exchanging, bartering or sale of cannabis. This includes transporting, manufacturing, cultivating, compounding, converting, processing, preparing, storing, packaging, and wholesale or retail sales of cannabis and cannabis products.

Medical marijuana consumer cooperatives licensed by the City would be exempt from the cannabis business tax, as would certain transactions involving patients and primary caregivers under the Compassionate Use Act.

Gross receipts is generally defined as the total revenue or compensation received by a cannabis business without any deduction for the cost of operating the business.

The maximum tax rate permitted by the measure would be 15%. Upon the effective date of the ordinance, the tax rate would be set at 5%, increasing to 8% on July 1, 2019. The City Council may, by ordinance, decrease or increase the tax rate at any time thereafter.

The ordinance includes provisions specifying how the tax administrator, the City Treasurer, would issue cannabis business tax certificates and collect the tax, which would be remitted by cannabis businesses to the City on a monthly basis. The measure also includes provisions for handling delinquencies, penalties, appeals and for the enforcement of the taxing provisions.

If approved by voters, the ordinance could be amended by the City Council so long as amendments do not raise the maximum tax rate in excess of 15% of gross receipts and do not tax businesses or activities that were previously not subject to the tax.

It is not possible to calculate the amount of revenue that could be generated by the tax as it is unknown how many businesses will be allowed to operate in the City, nor is it possible to estimate their gross receipts. If imposed, the tax would continue indefinitely unless it is repealed by the City Council or the voters.

The City Council proposed this measure and approved its placement on the ballot. If approved by voters, the measure would become effective after the City Council adopts a resolution certifying the results of the November election.

## FISCAL IMPACT STATEMENT

This measure would establish a Cannabis Business Tax (CBT) on non-medical cannabis (marijuana) businesses in the City of San Diego to raise revenue for general governmental purposes of the City. Because non-medical cannabis businesses are currently illegal in California, this measure is contingent on the passage of Proposition 64, the Adult Use of Marijuana Act, which also appears on the November 2016 ballot. Should both items be approved by voters, the CBT would become effective after certification of the election results. Should Proposition 64 fail to be approved by the voters statewide, the local CBT measure would become null and void.

Approval of this measure would establish a gross receipts tax on non-medical cannabis businesses that operate or provide services within the City, including retail stores, delivery services, cultivators, and distributors. Upon passage of the measure, the CBT rate would be set at 5% of gross receipts. On July 1, 2019, the tax rate would increase to 8%. The City Council would have the authority to either decrease or increase the CBT by ordinance at any time, subject to a maximum rate of 15%.

This measure's impact would be limited to the effects of a City-imposed gross receipts tax on non-medical cannabis. It would not affect other State-imposed taxes, nor would it affect land use regulations related to medical or non-medical cannabis businesses.

Fiscal impacts associated with this ballot measure include increased General Fund revenue from CBT paid to the City, as well as increased General Fund expenditures on administrative costs related to tax collection. These increased revenues and costs depend on a number of unknown factors, making them difficult to project. These variables include:

- The number of non-medical cannabis businesses permitted in the City, which has yet to be determined, and the rate at which the industry develops.
- The consumer demand for non-medical cannabis within the San Diego region, including availability in neighboring jurisdictions.
- The price of non-medical cannabis, which may change over time.

For illustrative purposes, the City and County of Denver, CO, which has roughly half the population of the City of San Diego, currently taxes non-medical cannabis sales. In 2015, Denver reported gross retail cannabis sales (excluding medical) of approximately \$220 million from an average of 128 retail outlets. Adjusting Denver's sales for San Diego's population gives an estimated hypothetical sales figure for San Diego of \$440 million. If the proposed CBT were applied to this amount at the initial rate of 5%, the tax would raise approximately \$22 million annually. At 8%, annual revenue under this scenario would be approximately \$35 million. Actual revenue would be significantly less or more depending on the unknown factors described above.

While administrative costs are uncertain and would vary based on the number of regulated cannabis businesses, the City Treasurer estimates CBT administration costs could necessitate increased contractual expenditures and the hiring of six new positions at a cost of approximately \$650,000 annually.



## ARGUMENT IN FAVOR OF MEASURE N

Measure N will impose a gross-receipts tax on recreational marijuana businesses operating within the City of San Diego only if voters statewide choose to legalize marijuana by passing Proposition 64, the Adult Use of Marijuana Act. The purpose of Measure N is to ensure that the city has the resources to properly regulate the marijuana industry without hurting our investment in core city services, such as neighborhood infrastructure and public safety.

Most large California cities either already have or are considering a similar measure in anticipation of the likely passage of Proposition 64. By passing Measure N, San Diego will be aligned with the best practices of other California cities preparing for the inherent strain on the city's budget caused by marijuana legalization. For example, San Jose, Los Angeles, Sacramento, and Santa Cruz all impose a similar tax on marijuana to deal with the impacts to their cities' budgets for first responders and code compliance.

Measure N is fiscally responsible, timely, and prudent. In recent years, the City of San Diego has been able to increase investment in core city services by anticipating new costs, efficiently managing new revenues, and making cost-cutting reforms. Measure N is consistent with this philosophy. By proactively imposing a gross-receipts tax on recreational marijuana, the city's budget will be protected from any new costs associated with marijuana legalization, and protect resources for investment in streets, sidewalks, parks, police and firefighters.

Measure N is the right policy at the right time for San Diego, which is why it received bipartisan support from the San Diego City Council.

We respectfully request a Yes vote on Measure N.

Councilmember MARK KERSEY

Council President SHERRI LIGHTNER

## ARGUMENT AGAINST MEASURE N

The marijuana tax percentages recommended in this ballot measure will NOT compensate in any way for the increased teen marijuana use, drug addiction, marijuana impaired driving, poisonings from marijuana concentrates and edibles, and mental health problems, that will come from increased recreational use of marijuana.

City government's first priority is the public health and safety of its citizens and neighborhoods, not facilitating drug use.

The tax money will be dropping into the general fund (the black hole, as described recently by a city councilman) and NOT going to support code and law enforcement actions or DUI prevention, treatment programs, or student prevention education.

As Colorado's Governor Hickenlooper learned too late regarding that state's big hopes for marijuana taxes: "We are not making any extra revenue from this".

The City does not have now nor will have in the future via marijuana taxes, the resources to track down marijuana dealers to collect unpaid taxes from mainly cash transaction. This has been demonstrated by the continuing operations of 40 plus unpermitted and illegal marijuana storefronts.

A proposed tax on recreational marijuana infers that the City Council will support the sale, manufacture, and neighborhood cultivation of recreational marijuana in our City. The City Council should first engage the public in a conversation regarding such a dramatic and far reaching public policy. This is a significant change from their public stance that they support marijuana as medicine but not the general sale, cultivation and advertising of recreational pot.

San Diego should not legitimize the sale, manufacture, unregulated neighborhood cultivation of pot, and marijuana advertising on billboards, TV, radio and social media, all in a cynical scheme to profit from the recreational use of marijuana. Vote No on Measure N.

SCOTT CHIPMAN  
San Diegans for Safe  
Neighborhoods and Small  
Business Owner

SHIRLEY FORBING  
San Diego State University  
Professor Emeritus, Ed.D.

JAMES BENJAMIN HARRISON  
Pastor, Visions of God Ministries  
and Pre-school Administrator

CATHIE JOLLEY  
President of Pacific Beach  
Town Council

JON FELLERS, PhD., MD

# FULL TEXT OF MEASURE N

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 3 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 4, TO BE NUMBERED AND TITLED, PERTAINING TO THE CANNABIS BUSINESS TAX ON NON-MEDICAL CANNABIS BUSINESSES DOING BUSINESS IN THE CITY OF SAN DIEGO.

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN DIEGO:

Chapter 3 of the San Diego Municipal Code is hereby amended to add a new Article 4 to be numbered, titled and to read as follows:

## Article 4: Cannabis Business Tax

### Division 1: Cannabis Business Tax

#### §34.0101 Title and Purpose.

- (a) Title. This Article shall be known as the Cannabis Business Tax Ordinance of the City of San Diego.
- (b) Purpose and Intent. It is the purpose and intent of the People of the City of San Diego that there be a tax imposed on non-medical cannabis businesses in the City and that such tax is enacted solely to raise revenue for the general governmental purposes of the City and not for purposes of regulation or raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this Article shall be placed in the City's general fund and used for general governmental purposes.

#### §34.0102 Tax imposed.

There is established and imposed a Cannabis Business Tax at the rate set forth in this Article.

#### §34.0103 Definitions.

Except where the context otherwise requires, the definitions given in this section shall govern the application and interpretation of this Article. Each word or phrase defined in this Division appears in the text of this Division in italicized letters.

- (a) "Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, oil, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
- (b) "Cannabis Business" means any activity which entails the distribution, delivery, dispensing, exchanging, bartering or sale of non-medical *Cannabis*, including but not limited to, transporting, manufacturing, cultivating, compounding, converting, processing, preparing, storing, packaging, wholesale, or retail sales of *Cannabis* and any ancillary products in the City, whether or not carried on for gain or profit. Medical

## FULL TEXT OF MEASURE N (CONTINUED)

marijuana activities authorized under Health and Safety Code section 11362.765, as it may be amended from time to time, are not Cannabis Business under this Article. Medical marijuana consumer cooperatives permitted pursuant to this Code are not Cannabis Businesses under this Article.

- (c) "Cannabis Business Tax" means the tax due for engaging in Cannabis Business in the City.
- (d) "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board.
- (e) "Engaged in Cannabis Business" means the commencing, conducting, operating, managing or carrying on of a Cannabis Business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in Cannabis Business within the City if:
- (1) Such person or person's employee maintains a fixed place of location for Cannabis Business purposes, in whole or in part, within the City for the benefit or partial benefit of such person;
  - (2) Such person or person's employee owns or leases real property within the City for Cannabis Business purposes;
  - (3) Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of such Cannabis Business;
  - (4) Such person or person's employee regularly conducts solicitation of Cannabis Business within the City, which may be demonstrated by the use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation; or
  - (5) Such person or person's employee uses the streets within the City in connection with the operation of motor vehicles, or other methods of transportation, for Cannabis Business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in Cannabis Business."

- (f) "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or

## FULL TEXT OF MEASURE N (CONTINUED)

bonds, however designated. Included in Gross Receipts shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

- (1) Cash discounts allowed and taken on sales;
- (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as Gross Receipts;
- (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (4) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in Gross Receipts;
- (5) Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
- (6) Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the operator in the regular course of the operator's business;
- (7) Cash value of sales, trades or transactions between departments or units of the same business;
- (8) Transactions between a partnership and its partners;
- (9) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
  - (A) The voting and non-voting stock of which is owned at least 80 percent by such other corporation with which such transaction is had; or
  - (B) Which owns at least 80 percent of the voting and non-voting stock of such other corporation; or
  - (C) At least 80 percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.
- (10) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in section 34.0103(f);

## FULL TEXT OF MEASURE N (CONTINUED)

(11) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar; and

(12) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Tax Administrator with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

"Gross Receipts" subject to the business tax shall be that portion of gross receipts relating to Cannabis Business conducted within the City.

(g) "Officer" means any natural individual serving as an officer of a corporation, a member of a partnership, a member or manager of a limited liability company, or in a similar executive capacity in any other legal entity, who is under a duty to perform on behalf of the corporation, partnership, limited liability company or other legal entity.

(h) "Operator" means any person engaged in Cannabis Business as the owner of such Cannabis Business, whether such ownership is partial or full. Where an Operator is a corporation, partnership, limited liability company or other legal entity, the acts and omissions of the Operator shall be deemed to be the acts and omissions of its Officers. Independent contractors engaged in Cannabis Business are Operators for the purposes of this Article.

(i) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(j) "Sale" means and includes any sale, exchange, or barter.

(k) "Tax Administrator" or "administrator" means the City Treasurer or such other administrator designated by the Mayor to administer this Article.

### §34.0104 Business Tax Certificate Required

(a) It is unlawful for any Operator to engage in any Cannabis Business in the City without first having obtained a business tax certificate from the City. Any person who fails to obtain the business tax certificate required by this Article shall be guilty of a misdemeanor. Operators exclusively engaged in Cannabis Business taxed under this Article shall be exempt from the provisions of Chapter 3, Article 1 of this Code.

## FULL TEXT OF MEASURE N (CONTINUED)

- (b) The issuance of a business tax certificate shall not entitle any person to engage in any Cannabis Business without first complying with the requirements of this Code and all other applicable laws.
- (c) It is unlawful to use or refer to a business tax certificate issued under this Article in any advertisement, or to present or represent such certificate as a license or permit required by other provisions of this Code or the laws of the State of California or the County of San Diego.
- (d) Any person claiming the activities of such person are not subject to the tax imposed by this Article shall, upon the request of the Tax Administrator, furnish appropriate evidence, to the satisfaction of the Tax Administrator, that such person is not subject to the tax.

### §34.0105 Application – Form and Contents

- (a) Every person required to have a business tax certificate under the provisions of this Article shall make application for the same, or for renewal of the same, to the Tax Administrator. The application shall be a written statement upon a form or forms provided by the Tax Administrator and shall be signed by the applicant under penalty of perjury. The application shall set forth such information as may be required and as may be reasonably necessary to enable the Tax Administrator to administer the provisions of this Article, including a representation by the applicant that any state or local licenses or permits required to engage in a Cannabis Business have been obtained. Failure to provide information required by the Tax Administrator shall authorize the Tax Administrator to not issue a business tax certificate to the applicant.
- (b) The information or data obtained from an examination or audit, or from any statement required hereunder, shall be used for official City purposes only, and shall not be provided to any person for any other purpose except as provided in this section, or as otherwise required by law.
- (c) Nothing in this section shall prohibit the Tax Administrator from furnishing to any citizen upon request the name under which the business is conducted, the address and type of business and the name of the owner of the business, including the names of partners, if a partnership, and the names of officers, if a corporation.
- (d) Any person who willfully makes, provides, or signs any false or untrue statement which is filed or furnished pursuant to this section is guilty of a misdemeanor.

### §34.0106 Transferability

Business tax certificates issued under this Article are nontransferable.

### §34.0107 Branch Establishments

Separate business tax certificates must be obtained for each branch establishment or business location.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0108 Posting and Keeping Certificates

Except as otherwise specifically provided in this Article, business tax certificates must be kept and posted in the following manner:

- (a) Any person engaging in Cannabis Business at a fixed location shall keep the certificate posted in a conspicuous place upon the premises where such Cannabis Business is conducted.
- (b) Any person engaging in Cannabis Business in the City of San Diego, but not operating from a location, shall keep a copy of the business tax certificate or original business tax certificate upon his or her person at all times while engaging in the business.
- (c) Any person engaging in Cannabis Business taxed under this Article shall exhibit a valid business tax certificate upon request of the Tax Administrator or any peace officer.

### §34.0109 Other Licenses, Permits, Taxes, Fees or Charges

- (a) Nothing contained in this Article shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other chapter or article of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other chapter or article of this Code or any other ordinance or resolution of the City.
- (b) Persons may not lawfully engage in Cannabis Business to be taxed by this Article without first obtaining any permit, certificate, license or other evidence of permission to engage in Cannabis Business required by the City and any license required to engage in Cannabis Business by the State of California.

### §34.0110 Payment of Tax Does Not Authorize Unlawful Business

- (a) The payment of a Cannabis Business Tax required by this Article, and its acceptance by the City, shall not entitle any person to carry on any Cannabis Business unless the person has complied with all of the requirements of this code and all other applicable laws.
- (b) No Cannabis Business Tax paid under the provisions of this Article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the City.

### §34.0111 Payment - Location

The tax imposed under this Article shall be paid to the City Treasurer in the lawful currency of the United States, at the Offices of the City Treasurer in San Diego, California, or at another location as permitted or required by the City Treasurer. Lawful currency shall mean any coin, currency or negotiable instrument, exchangeable for said coin or currency, which the United States Congress has declared to be a national legal tender.



## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0112 Amount of Business Tax Owed

- (a) Every Operator engaged in Cannabis Business in the City shall pay a Cannabis Business Tax at a rate of up to 15 percent of Gross Receipts. Commencing on [effective date], the Cannabis Business Tax rate shall be five percent of Gross Receipts.
- (b) Notwithstanding the maximum tax rate of 15 percent of Gross Receipts imposed under subsection 34.0112(a), the City Council may, in its discretion, at any time by ordinance, implement a lower tax rate for all Cannabis Businesses or establish differing tax rates for different categories of Cannabis Businesses, as defined in such ordinance, subject to the maximum rate of 15 percent of Gross Receipts. The City Council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of 15 percent of Gross Receipts established under subsection 34.0112(a).
- (c) Commencing on July 1, 2019, the Cannabis Business Tax rate shall be set at eight percent of Gross Receipts unless the City Council, by ordinance, takes action to set a different tax rate, not to exceed 15 percent of Gross Receipts.

### 34.0113 Remitting and Reporting

The Cannabis Business Tax imposed by this Article shall be due and payable as follows:

- (a) Each Operator shall remit monthly the full amount of the tax owed from the previous month with the appropriate approved return form available from the Tax Administrator.
- (b) Returns and taxes remitted monthly by an Operator and actually received by the Tax Administrator on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by section 34.0114.
- (c) Each Operator shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the Tax Administrator of the total Gross Receipts and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the Tax Administrator.
- (d) Returns filed and taxes remitted by mail or courier service shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage, and bears a United State postmark, postage meter imprint, or courier pick up date, prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.
- (e) To the extent allowed by law, all returns and payments submitted by each Operator shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

## FULL TEXT OF MEASURE N (CONTINUED)

- (f) The same basis of accounting used by an *Operator* for keeping books and records shall be used for reporting and remitting.
- (g) If returns and taxes are due on a Saturday, Sunday, or a recognized City holiday, the due day shall be the next regular business day on which the Office of the City Treasurer is open to the public.

### §34.0114 Delinquency; Penalties

- (a) Unless otherwise specifically provided under other provisions of this Article, the *Cannabis Business Tax* required to be paid pursuant to this Article shall be deemed delinquent if not paid on or before the due date specified in section 34.0113.
- (b) Any person who fails or refuses to pay any tax required to be paid pursuant to this Article on or before the due date shall pay penalties and interest as follows:
  - (1) A penalty equal to 25 percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax; and
  - (2) An additional penalty equal to 25 percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties.
  - (3) Interest at the rate of one and one-half percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the last day of the month following the month period for which the amount of any portion thereof should have been paid until the date of payment.
  - (4) *Operators* must remit all taxes, interest and penalties owed unless an alternate payment agreement is reached with the *Tax Administrator*.
- (c) Whenever a check is submitted for payment of the taxes due and the check is returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the *Operator* will be liable for the tax amount due plus the returned check fee; penalties and interest as provided for in this section, and any amount allowed under state law.
- (d) The *Cannabis Business Tax* due shall be that amount due and payable from the first date on which a person was engaged in *Cannabis Business* in the City, together with applicable penalties and interest calculated in accordance with subsection 34.0114(a).

### §34.0115 Notice Not Required by City

The *Tax Administrator* is not required to send a delinquency or other notice or bill to any *person* subject to the provisions of this Article and failure to send such notice or bill shall not affect the validity of any tax, interest, or penalty due under the provisions of this Article.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0116 Failure to Report Tax; Jeopardy Determination

- (a) If any Operator fails or refuses to report or remit any Cannabis Business Tax due under this Article or if such Operator maintains records which are inadequate to show the amount of the tax due, the Tax Administrator shall forthwith assess the tax, interest and penalties provided for by this Article against the Operator.
- (b) When an Operator fails or refuses to make or file a timely return or remittance of taxes, or when the Tax Administrator, or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures, or by estimation if no records are available, that an Operator is or will be unable to remit any taxes due at the prescribed time, the Tax Administrator may make a written jeopardy determination which shall be issued to the Operator to require the Operator to thereafter furnish additional information or provide adequate security as necessary to ensure the remittance of taxes on a daily or weekly basis. The Operator shall thereafter report and remit all taxes due under the terms and conditions prescribed by the Tax Administrator. The Tax Administrator shall cancel the requirements imposed under the jeopardy determination once timely accounting and remittance procedures have been established and the Operator is meeting all obligations imposed by law for the remittance of taxes.
- (c) The Tax Administrator shall deliver notice of the assessment or the jeopardy determination to the Operator or deposit it in the United States mail, postage prepaid, addressed to the Operator at the last known place of business.

### §34.0117 Administrative Remedies and Appeals

- (a) An Operator may within 14 calendar days after the serving or mailing of a notice of assessment or jeopardy determination make application in writing to the Tax Administrator for a hearing on the amount assessed pursuant to section 34.0116. If timely application for a hearing is not made, the tax, interest and penalties determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five calendar days written notice in the manner prescribed herein to the appellant of the time and place for a hearing before a board consisting of the Tax Administrator, the City Comptroller and the Director of Financial Management or the duly appointed deputy of each. At the hearing, the Operator may appear and offer evidence why the specified tax, interest, and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax, interest, and penalties to be remitted. After the hearing, the Tax Administrator shall give written notice to the appellant in the manner prescribed herein of the determination and the amount of such tax, interest, and penalties. If the amount remaining in dispute thereafter does not exceed \$5,000.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the appellant's administrative remedies. Any amount found to be due shall be payable within 14 calendar days of the serving or mailing of the determination of the tax due unless a further appeal is filed with the Chief Operating Officer as provided in this section within that 14-day period for any amount in excess of \$5,000.00.

## FULL TEXT OF MEASURE N (CONTINUED)

- (b) When an appeal from the hearing board for remaining taxes and penalties exceeding \$5,000.00 is filed, the Chief Operating Officer, or designee, shall cause the appeal to be assigned to a hearing officer, who shall schedule a hearing to be heard within a reasonable time. The hearing officer shall be appointed by the Chief Operating Officer, shall be a member of the California Bar and shall not be a City employee. The hearing officer shall be compensated by the City of San Diego for the time spent deciding the appeal.
- (c) The appellant and the Chief Operating Officer, or designee, shall each have the right to appear in person and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The hearing officer shall have the power to compel attendance of witnesses and documents by subpoena in accordance with the California Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the hearing officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.
- (d) The hearing officer is authorized to rule upon issues of law or fact and to determine the amount of the tax, interest or penalty in accordance with this Article. The hearing officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax, interest or penalty found to be duly imposed.
- (e) The decision of the hearing officer shall be issued in writing no later than fourteen calendar days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City. Any amounts due shall be immediately payable to the City Treasurer.
- (f) The City may promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

### §34.0118 Refunds

- (a) Whenever the amount of any Cannabis Business Tax or penalty under this Article has been overpaid, paid more than once, or has been erroneously or illegally received by the City, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms available from the Tax Administrator.
- (b) An Operator who has remitted an amount in excess of the amount required to be paid may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the Operator. Such credit, if approved by the Tax Administrator, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the Tax Administrator.

## FULL TEXT OF MEASURE N (CONTINUED)

- (c) No refund shall be paid under the provisions of this section unless the claimant establishes his right to such refund by written records sufficient to show entitlement thereto.

### §34.0119 Exemptions – General

Except as may be otherwise specifically provided in this Article, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law.

### §34.0120 Enforcement

- (a) It shall be the duty of the Tax Administrator to enforce each and all of the provisions of this Article. The Chief of Police and other City officials shall render such assistance in the enforcement of this Article as may from time to time be required by the Tax Administrator.
- (b) The Tax Administrator in the exercise of the duties imposed by this Article, and acting through deputies or other duly authorized City employees, may examine all places of business in the City to ascertain whether or not the provisions of this Article have been complied with.
- (c) The Tax Administrator, deputies and duly authorized City employees shall have the power to examine all necessary books and records of any person doing business in the City to determine whether that business is required to be taxed by the terms of this Article, or for the purpose of ascertaining the amount of any tax required to be paid. The Tax Administrator and all deputies and duly authorized City employees shall have the power and authority to enter, free of charge, at any reasonable time any place of business and to demand the exhibition of a business tax certificate. Unless exempted by the provisions of this Code, any person having any such business tax certificate therefore issued in his or her possession or under his or her control, or who is required to have such business tax certificate, and who fails to exhibit the same on demand shall be guilty of a misdemeanor and be further subject to the penalty provided for by section 34.0114 of this Code.

### §34.0121 Officer Liability

Any Officer who willfully fails to accurately report or remit any Cannabis Business Tax due under this Article, or who willfully attempts in any manner to evade or defeat any tax due shall, in addition to other penalties provided by law, be liable for a penalty in the amount of the tax not paid or evaded, to be assessed and collected in the same manner as such taxes are assessed and collected.

### §34.0122 Rules and Regulations

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this Article generally, the Tax Administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0123     Apportionment

- (a) None of the tax provided for by this Article shall be applied so as to occasion an undue burden upon interstate commerce or violate the equal protection and due process clauses of the Constitutions of the United States or the State of California.
- (b) If any case where a business tax imposed under this Article is believed by a taxpayer to place an undue burden upon interstate commerce or violate such constitutional clauses, the taxpayer may apply to the Tax Administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.
- (c) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the Tax Administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Tax Administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the Tax Administrator shall have the power to base the tax upon a percentage of Gross Receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this Article
- (d) Should the Tax Administrator determine that the gross receipt measure of tax to be the proper basis, the Tax Administrator may require the taxpayer to submit a sworn statement of the Gross Receipts and pay the amount of tax as determined by the Tax Administrator.

### §34.0124     Audit and Examination of Records

It shall be the duty of every person liable for the payment to the City of any Cannabis Business Tax imposed by this Article to keep and preserve, for a period of three years, all business records as may be necessary to determine the amount of such tax for which the Operator is liable. The Tax Administrator and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the Tax Administrator, or the City Auditor when so requested by the Tax Administrator.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0125 Tax Deemed Debt to City

The amount of any tax, penalties and interest imposed by this Article shall be deemed a debt to the City. Any person engaging in any Cannabis Business without first having procured a business tax certificate shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such business and for attorneys' fees in the enforcement of this Article. Upon the concurrence of the City Attorney and the Chief Financial Officer, the Tax Administrator is authorized to compromise the collection of the amount owed or establish a schedule of payment for any tax due, including penalties and interest, or to discontinue the collection of any claim if it appears that further proceedings would not be advantageous to the City.

### §34.0126 Actions to Collect Taxes and Enforce Liens

- (a) Upon exhaustion of administrative remedies and appeals to determine the amount of any tax liability under section 34.0117, the Tax Administrator may record a Certificate of Lien against real property to collect unpaid taxes, interest, and penalties with any county recorder in the State of California, and such lien shall attach to all property owned or thereafter acquired by any person owing any such Cannabis Business Tax to the City. The Certificate of Lien shall specify the amount of the tax, and penalties and interest due, the name and address of the person(s) liable for the same, and a statement that the Tax Administrator has complied with all provisions of this Article in the determination of the amount required to be paid. Such liens shall be recorded in accordance with applicable law in the jurisdiction in which the property is located.
- (b) At any time within three years after any person owing tax to the City under this Article is delinquent in the payment of any amount herein required to be paid, or within ten years after the last recording or filing of a Certificate of Lien under section 34.0126(a), the Tax Administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this Article. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.
- (c) At any time within three years from the date the Cannabis Business Tax became delinquent or a Certificate of Lien was recorded under section 34.0126(b), the Tax Administrator may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect the Cannabis Business Tax due shall be only of property of the Operator not exempt from execution under the provisions of the Code of Civil Procedure.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0127 Successor and Assignee Responsibility

- (a) If any Operator, while liable for any amount under this Article, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the Operator's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business, shall satisfy any tax liability owed to the City associated with the business. Failure to do so for the benefit of the City will result in being personally liable to the City for the full amount of the tax liability, which includes interest and penalties.
- (b) The successor Operator, assignee, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the Tax Administrator of the date of transfer at least 30 calendar days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than 30 calendar days prior to the date of transfer, notice shall be provided immediately.
- (c) The successor Operator, assignee, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability, if that person or entity complies with the requirements of California Revenue and Taxation Code section 7283.5 by withholding from the purchase price an amount sufficient to cover the tax liability, or by otherwise paying the tax liability until the Tax Administrator provides a "Tax Clearance Certificate" showing that it has been paid and stating that no amount is due through the date of transfer.
- (d) The Tax Administrator, within 90 calendar days of receiving a written request from a successor Operator, assignee, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of a Cannabis Business, may request financial records from the current or former owner or Operator to conduct an audit of the tax that may be due and owing. If the City determines that the records provided for an audit are insufficient, the Tax Administrator may rely on the facts and information available to estimate any tax liability associated with the Cannabis Business. Within 30 calendar days of completing the audit, the Tax Administrator shall issue a "Tax Clearance Certificate" if it finds no tax, penalties, or interest is due, or mail a notice stating the amount of the tax, penalty, and interest liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax clearance certificate must be made within ten calendar days after the serving or mailing of the certificate. The hearing provision of section 34.0117 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.



## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0128 Violations and Criminal Proceedings

- (a) Any Operator who willfully: 1) fails to file or cause to be filed any return required by this Article; 2) files or causes to be filed a false return; 3) fails or refuses to remit or cause to be remitted any tax required to be paid; or 4) refuses to allow an audit to be conducted, is guilty of a misdemeanor.
- (b) The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.
- (c) Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.
- (d) Any Operator violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.
- (e) Notwithstanding section 12.0102 of this Code, violation under this Article shall be punishable as misdemeanors by a fine of not more than one thousand dollars or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

### §34.0129 Remedies Cumulative

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the False Claims Act (California Government Code section 12650-12656) and the Unfair Practices Act (California Business and Professions Code section 17070-17101), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

### §34.0130 Effect of State and Federal Reference/Authorization

- (a) Unless specifically provided otherwise, any reference to a state or federal statute in this Article shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute, or interpretation thereof, shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute, or new interpretation thereof, shall be applicable to the maximum possible extent.
- (b) To the extent that the City's authorization to collect or impose any tax imposed under this Article is expanded as a result of changes in state or federal law, no amendment or modification of this Article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Article.

## FULL TEXT OF MEASURE N (CONTINUED)

### §34.0131 Severability

Should any provision of this Article, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Article or the application of this Article to any other person or circumstance and, to that end, the provisions hereof are severable.

### §34.0132 Amendment or Repeal

Chapter 3, Article 4 of the San Diego Municipal Code may be repealed or amended by the City without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Article. The people of the City of San Diego affirm that the following actions shall not constitute an increase of the rate of a tax:

- (a) The restoration of the rate of the tax to a rate that is no higher than the maximum 15 percent tax rate set by this Article, if the City has previously acted to reduce the rate of the tax;
- (b) The City's adoption of an ordinance, as authorized by section 34.0112, to raise the tax rate provided the tax rate is not raised to a rate higher than 15 percent.
- (c) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Article;
- (d) The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Article); or
- (e) The collection of the tax imposed by this Article, even if the City had, for some period of time, failed to collect the tax.
- (f) This ordinance shall be null and void and of no effect if Proposition 64, Marijuana Legalization Initiative Statute, is not approved by voters at the November 8, 2016 statewide General Election.

END OF MEASURE