

AMENDMENT TO THE SAN DIEGO CITY CHARTER
Proposed by Women Occupy San Diego
For November 2020 Election Ballot

Part A. Amendment to the Charter of the City of San Diego.

Section 40: City Attorney of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

A City Attorney shall be elected for a term of four years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.

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 and the Commission on Police Practices, which shall have ~~its~~ their 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.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year 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.

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.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

Section 41: Commissions of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

With the exception of members appointed to the Commission on Police Practices,

~~the~~ The Mayor shall appoint, subject to the confirmation of the Council, members of all commissions established pursuant to this section. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two-thirds (2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the commission member and an opportunity afforded for public hearing before the Council upon such charges. The City Council may remove members of the Commission on Police Practices for cause by vote of a majority of the members of the Council. Cause to remove a member of the Commission on Police Practices shall be defined by ordinance. The City Council may remove members of all other commissions established pursuant to this section for cause by vote of a majority of the members of the Council.

- (a) Funds Commission. This Commission shall have supervision and control over all trust, perpetuity, and investment funds of the City and such pension funds as shall be placed in its custody, and shall administer them subject to the laws of the State and ordinances of the Council. The membership of this Commission shall be appointed by the Mayor and confirmed by the Council and shall be one bank official, two unclassified citizens, and the City Attorney and City Treasurer, ex officio. They shall serve without compensation for terms of four (4) years and until their successors are elected and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year.
- (b) Civil Service Commission. There shall be a Civil Service Commission consisting of five members who shall be electors of the City. Not more than three members of the Commission shall be of the same sex. The Mayor, with the approval of the Council, shall appoint the members of the Commission. The members of the Commission shall be appointed to serve for five years and until their successors have been appointed and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year. The Mayor, with the approval of the Council, shall fill any vacancy.

Members of the Civil Service Commission shall not hold any other office in City Government.

- (c) City Planning Commission. The City Planning Commission shall be organized as provided by the laws of the State and have such powers and perform such duties as are prescribed by such laws. The duties of the Commission shall also include advising upon public buildings, bridges, retaining walls, approaches, park and

harbor structures, the improvement of Pueblo lands and such other improvements as the Council may by ordinance determine. The Commission shall consist of seven (7) members appointed by the Mayor, subject to the confirmation of the Council. The City Engineer, and the City Attorney, or their designated representatives, shall be members ex officio, but neither of said officers shall have a vote. The members of this Commission shall serve without compensation for terms of four years and until their successors are elected and appointed and qualified.

(d) Commission on Police Practices. The Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures provided by this Charter and by ordinance, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Commission on Police Practices is required to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its duties and powers.

~~(d)~~(e) Ethics Commission. For so long as an Ethics Commission remains established by ordinance of the Council, the Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Ethics Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties

Section 41.2: Commission on Police Practices of the Charter of the City of San Diego is added to read (new text is shown by underlining):

A Commission on Police Practices is hereby established. The establishment of this Commission supersedes the Community Review Board on Police Practices previously created by the San Diego City Charter.

(1) The Commission on Police Practices is an independent Commission, not a Board of the City of San Diego.

(2) The Commission is required to perform the following duties:

- (A) the duty to investigate (1) all deaths occurring while a person is in the custody of the Police Department of the City of San Diego; (2) all deaths resulting from interaction with an officer of the Police Department of the City of San Diego; and, (3) all police officer-related shootings. The Commission shall have these duties whether or not a complaint has been submitted. Such investigations must be conducted by investigators independent of the San Diego Police Department;
- (B) the duty to receive, register, review and evaluate all complaints made against officers of the Police Department of the City of San Diego;
- (C) the duty to review all findings and conclusions of the San Diego Police Department arising from investigations of police misconduct. This review must be conducted before any implementation of police officer discipline;
- (D) the duty to review discipline decisions proposed by the Chief of Police (or any other entity with the power to impose officer discipline) as a result of any allegations of police misconduct prior to their implementation;
- (E) the duty to evaluate the Police Department of the City of San Diego's compliance with federal, state, and local reporting laws and requirements;
- (F) the duty to submit quarterly reports to the Mayor and City Council regarding the exercise of the Commission's duties and powers. Such reports shall be public but may not disclose any information required to be kept confidential by federal or state law; and,
- (G) any additional duties established by ordinance and consistent with duties established in this Section.

(3) The Commission may, at its discretion, exercise the following powers:

- (A) the power to review, evaluate, and investigate all complaints against officers of the San Diego Police Department;

In determining whether to investigate a matter that the Commission has the power but not the duty to investigate, the Commission shall consider whether the complaint arises from any of the following incidents:

- (1) An incident in which the use of force by a San Diego police officer against a person resulted in great bodily injury;
- (2) Dishonesty by a San Diego police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited

to, an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence;

(3) An incident that has generated substantial public interest or concern; and,

(4) Any other incident the Commission deems is appropriate.

- (B) the power to review, evaluate, and investigate upon receipt of a written complaint all allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the San Diego Police Department as well as any other allegations of concern about the San Diego Police Department or its officers. In addition, for allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the San Diego Police Department, the Commission shall have power to review, evaluate, and investigate the allegations whether or not a written complaint has been submitted;
- (C) the power to review and evaluate the policies, procedures, practices, and actions of the Police Department of the City of San Diego;
- (D) the power to retain or employ (1) independent investigators to conduct investigations; (2) policy analysts to evaluate the policies, procedures, practices; and actions of the Police Department of the City of San Diego; (3) individuals to evaluate the Police Department of the City of San Diego's compliance with federal, state, and local reporting laws and requirements and, (4) such other staff as is appropriate;
- (E) the power to subpoena witnesses, compel their attendance, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers, subject to the restrictions of applicable federal and state law;
- (F) the power to make recommendations to the Police Department of the City of San Diego on the discipline of individual officers against whom complaints have been made or on whom the Commission has conducted an investigation;
- (G) the power to review and evaluate the administration of discipline arising from sustained complaints and other matters investigated by the Commission;
- (H) the power to make specific recommendations to the Police Department of the City of San Diego and the San Diego City Mayor on the policies,

procedures, practices and actions of the Police Department of the City of San Diego; and,

- (I) any additional powers established by ordinance and consistent with powers established in this Section.

- (4) All records or other materials of the San Diego Police Department relating to any matter reviewed, evaluated, or investigated by the Commission on Police Practices shall be made available to the Commission on Police Practices within the restrictions of applicable federal and state law.

- (5) The Commission on Police Practices must seek and receive legal advice from independent legal counsel, not the Office of the City Attorney.

- (6) Within 120 days of this amendment's adoption, the Mayor and City Council must establish and fund a sufficient and appropriate budget for the Commission that will allow it to effectively carry out its duties and powers.

- (7) Any provisions of the San Diego City Charter in conflict with this amendment are hereby amended to conform to the terms of this amendment.

- (8) Within 120 days of this amendment's adoption, the San Diego City Council must enact an ordinance which:
 - (A) details the duties and powers of the Commission on Police Practices;

 - (B) establishes the number, term and method for appointing members to the Commission. Commission members must include at least two youth members, who at the time of their appointments are at least eighteen but less than twenty-one years old. The number, term and method established by ordinance may differ from the number, term and method described in Section 41 of the San Diego City Charter;

 - (C) establishes the circumstances and process under which a member of the Commission may be removed from the Commission and establishes cause for removal. The removal process established by ordinance may differ from that described in Section 41 of the San Diego City Charter; and,

 - (D) does not interfere with the Commission's authority to independently refer a matter under investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency.

- (9) Within 120 days of this amendment's adoption, the San Diego City Council must repeal those ordinances or parts of ordinances pertaining to the Community Review Board on Police Practices.

- (10) At the time the amendment is adopted, the existing Community Review Board on Police Practices is immediately dissolved. The members of the Community Review Board on Police Practices at the time the amendment is adopted shall immediately become the interim members of the Commission on Police Practices and shall serve in that capacity until the San Diego City Council has enacted an ordinance as described in paragraph (8) of this section and new members are appointed to the Commission pursuant to the procedures established in that ordinance. These interim members may, at their discretion, retain their staff members from the Community Review Board on Police Practices to assist them in their capacity as interim members of the Commission on Police Practices. Should an interim member of the Commission resign before the San Diego City Council has enacted an ordinance as described in paragraph (8) of this section and new members are appointed to the Commission pursuant to the procedures established in that ordinance, the position shall be considered vacant and eligible for the Mayor to appoint and the City Council to confirm a new interim member, who shall serve only until the new members are appointed.
- (11) At the time the amendment is adopted, the Commission on Police Practices shall be funded using the same funds at the same level as those designated for the Community Review Board on Police Practices, and funding at this rate shall continue until the Mayor and City Council have established and funded a sufficient and appropriate budget for the Commission as required in paragraph (6) of this section.

Section 43: Advisory Boards and Committees of the Charter of the City of San Diego is amended to read (new text is shown by underlining and deleted text is shown by ~~strikeout~~):

- (a) The City Council may by ordinance create and establish advisory boards. Such boards shall be advisory to the Mayor, Council or City Manager as may be designated by ordinance. All members of such boards shall be appointed by the Mayor with Council confirmation, and the terms of office of such members may extend beyond the elective term of the appointing Mayor. The members of such boards shall serve without compensation and it shall be their duty to consult and advise with the Mayor, Council or City Manager, as the case may be, but not to direct the conduct of any Department or Division. Members of such advisory boards shall be limited to a maximum of eight (8) consecutive years in office and an interval of four (4) years must pass before such persons can be reappointed.
- (b) The Mayor, City Council or City Manager may create and establish citizens' committees. Such committees shall be created and established only for the purpose of advising on questions with clearly defined objectives, and shall be temporary in nature, and shall be dissolved upon the completion of the objectives for which they were created. Committee members shall serve without compensation.

- (c) Whenever under the provisions of this Charter or ordinance the Mayor is vested with authority to appoint the members of boards or committees and does not take such action within forty-five (45) days after the board or committee has been established or a vacancy occurs, then the Council shall make such appointments. The Council may remove committee and board members by vote of a majority of the members of the Council.
- ~~(d) Community Review Board on Police Practices. Notwithstanding any other provision of this Charter, the Mayor and City Council shall have the exclusive authority to create and establish a 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 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 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.~~

Part B. Severability.

If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

Part C. Impact of concurrent ballot measures.

Should this amendment be adopted, any concurrently adopted amendment to the San Diego City Charter that relates only to the Community Review Board on Police Practices would not be in conflict with this amendment, but instead would be rendered moot and not go into effect, as this amendment immediately dissolves the Community Review Board on Police Practices.