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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – HALL OF JUSTICE

DONNA FRYE,

Plaintiff and Petitioner,

vs.

CITY OF SAN DIEGO; and DOES 1 through 1,000,

Defendants and Respondents

CASE NO. 37-2017-00041323-CU-MC-CTL

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES; DECLARATION OF CORY J. BRIGGS; SUPPORTING EXHIBITS

Action Filed: October 30, 2017
Department: C-64 (Meyer)

Hearing Date: August 9, 2019
Hearing Time: 10:30 a.m.

Plaintiff and Petitioner DONNA FRYE respectfully submits this separate statement of disputed and additional material facts, together with references to exhibits (filed concurrently), in opposition to the motion for severance and/or summary adjudication of issues by Defendant and Respondent CITY OF SAN DIEGO.

Date: July 26, 2019.

Respectfully submitted,

BRIGGS LAW CORPORATION

By: Cory J. Briggs

Cory J. Briggs

Attorneys for Plaintiff Donna Frye

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
1. The City occasionally receives from its outside attorneys, requests to waive conflicts of interest under the CPRC from its outside attorneys. Supporting Evidence: Council Policy No. 000-34 (Council Policy), attached as Exhibit A.	**Undisputed.** Unclear as to the term "occasionally." It is unclear as to how often CITY receives requests to waive conflict of interests from outside attorneys given that the waivers are no longer placed on public agenda at Council meetings.
2. As an organizational client, the City acts through its duly authorized officers overseeing the particular engagement. Supporting Evidence *Council Policy, attached as Exhibit A, San Diego City Charter (Charter), §§ 1, 11, 26, 28, 260, attached as Exhibit B.*	**Undisputed.**
3. Depending upon the scope of the representation, the authorized constituent within the City to approve a waiver request could be either the City Council as the legislative body of the City or the Mayor as the Chief Executive Officer. *Council Policy, attached as Exhibit A, San Diego City Charter (Charter),§§ 11, 26, 28, 260, and 265 attached as Exhibit B.*	**Disputed.** Under the City Charter, the City Council has the sole authority to hire outside attorneys. *See* Add'l Fact 42, *infra.* The authority to enter into a contract includes the authority to modify it.
4. Prior to adoption of Council Policy No. 000-34 (Council Policy), the City's "historic practice" had been for the Mayor and City Attorney to confer on and execute waiver requests without this practice being formally documented. Supporting Evidence: *Council Policy, attached as Exhibit A; Resolution No. R-311166, attached as Exhibit C.*	**Disputed.** The evidence does not support this proposition. In fact, the evidence shows that the "historic practice" was to have the City Council discuss the waiver request, at a public meeting, and then delegate the responsibility for executing the waiver to the Mayor. *See* Defs.' Ex. C.
5. Prior to adoption of the Council Policy, in many, if not most cases, the City Attorney's Office approved the waiver requests on behalf of the City. Supporting Evidence: *Waiver requests, attached to FAC as Exhibit E, attached here as Exhibit D; Declaration of Catherine Richardson, attached as Exhibit E, at* ¶ 2.	**Disputed.** There is no evidence that the waiver requests were ever presented to the City Council (or to the Mayor, assuming he had the authority to approve them). The City Attorney's Office may have executed the requested waivers, but there is nothing in Exhibit D (or any of the other evidence submitted by Defendant) that establishes any official ***outside*** the City Attorney's Office ever approved the waivers.
6. In or about June 2017, the City Attorney's Office received waiver requests from two different law firms. Those requests were	**Undisputed.**

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
reviewed by the City Attorney' s Office; it was determined that the waivers involved matters within the purview of the Council. As a result, the matter was placed on the Council's agenda to seek approval of a resolution by the Council authorizing the Mayor, in consultation with the City Attorney, to execute the waivers on behalf of the City. Supporting Evidence: *Resolution No. R-311166, attached as Exhibit C; Declaration of Catherine Richardson, attached as Exhibit E, at ¶ 3; Council Action Executive Summary dated May 24, 2017, attached as Exhibit F.*	
7. The proposed resolution included a provision authorizing the Mayor to waive future waiver requests in consultation with the City Attorney if "they determine that the matter poses minimal risk to the City and the conflicted attorney, by virtue of his or her representation of the City, obtained little confidential information that is material to the matter." *Resolution No. R-311166, attached as Exhibit* C; *Declaration of Catherine Richardson, attached as Exhibit E, at ¶ 9; Council Action Executive Summary dated May 24, 2017, attached as ·Exhibit F; Proposed Resolution, attached as Exhibit* G.	**Undisputed**.
8. At the public hearing, the Council approved the resolution as to the two specific waiver requests. As to future requests, however, the Council voted to strike the language authorizing the Mayor to waive future conflicts, and directed the City Attorney to return to the Rules Committee with a proposed Council Policy outlining the waiver and notification process. Supporting Evidence: *Minutes for the Regular Council Meeting of Tuesday, June 6, 2017, Item 104, attached as Exhibit H; Declaration of Catherine Richardson, attached as Exhibit E, at ¶10*	**Undisputed.**
9. The City Attorney's Office returned to the Rules Committee on July 27, 2017, presenting a proposed Council Policy re: Waiver of conflicts of interest under California Rules of Professional Conduct, Rule 3-310. On that date, the item was heard by the Rules Committee,	**Undisputed**.

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
which approved the recommendation and forwarded the proposal to the full Council. The Rules Committee meeting was properly noticed and the public was permitted to comment on the proposal. Supporting Evidence: *Rules Committee of the City of San Diego Agenda for the Committee Meeting of Thursday, July 27, 2017, Item 2, attached as Exhibit I; Declaration of Catherine Richardson, attached as Exhibit E, at ¶12.*	
10. On August 1, 2017, the proposed Council Policy was included on the City Council's Supplemental Docket Number 2 for the Regular Meeting of August 1, 2017. Again, the matter was properly noticed and the public had the opportunity to comment on the proposal. *City Council's Supplemental Docket Number 2 for the Regular Meeting of August 1, 2017, Item S-502, attached as Exhibit J; Declaration of Catherine Richardson, attached as Exhibit E, at ¶14.*	**Undisputed.**
11. After consideration by the full Council in open session, the subject Council Policy was adopted by the Council and the resolution adopting the Policy was approved. Supporting Evidence: *Council Policy No. 000-34, attached as Exhibit A,· Resolution No. R-311166, attached as Exhibit* C; *Declaration of Catherine Richardson, attached as Exhibit E, at ¶16; Minutes of the City Council Meeting of August 1, 2017, Item S-502, attached as Exhibit K.*	**Undisputed.**
12. The Council Policy established procedures for how the City addresses conflict waiver requests from attorneys. Specifically, it provides a "delegation and notification procedure for potential conflicts of interest that concern matters for which the City Attorney has determined Council to be 'the client' under the [California Rules of Professional Conduct], Rule 3-600. Further, it provides guidance for when conflicts may be made." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Disputed** The Council Policy ***purports*** to establish procedures for approving waiver requests. But the legality of the procedures is the very issue for this Court to decide.

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
13. The Council Policy addresses: (1) how and when the Council will be notified of waiver requests, (2) when the requests will be docketed on the Council's agenda, and (3) in what circumstances the Council can delegate its authority to approve the waiver requests to the Mayor. Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
14. The Council Policy states that the "City Attorney's Office will promptly notify Council in writing of all requests for waiver where the City Attorney has determined that Council is the client under the CPRC ...." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
15. Pursuant to the Council Policy, waiver requests will be added to the Council's agenda if "the City Attorney's Office receives requests from at least four Council members within 10 days." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
16. If the Council does not place a waiver request on its agenda, it delegates its authority to "the Mayor in consultation with the City Attorney ... to consider and grant the request(s) consistent with the factors articulated in this Policy." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
17. Prior to approval of the Council Policy, there was not a "practice" of considering waiver requests by the Council in open session. Supporting Evidence: *Council Policy, attached as Exhibit A; Resolution No. R -311166, attached as Exhibit* C; *Declaration of Catherine Richardson, at ¶ 2, attached as Exhibit E.*	**Disputed.** As Defendant's own evidence shows, on June 6, 2017 – ***before*** the disputed Council Policy was adopted – two conflict waivers were presented to the City Council for approval. *See* Defs.' Ex. C (approving two conflict-waiver requests from outside lawyers and authorizing Mayor to execute waivers on City's behalf).

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
18. With the enactment of the Council Policy, there is an established policy and procedure for the processing of waiver requests that was not previously in effect. Supporting Evidence: *Council Policy, attached as Exhibit A; Resolution No. R-311166, attached as Exhibit C; Declaration of Catherine Richardson, at ¶ 18.*	**Undisputed.**
19. San Diego is a charter city. Supporting Evidence: *Charter,§§ 1-3, attached as Exhibit B.*	**Undisputed.**
20. The Council elected, by its adoption of the Council Policy, to delegate to the City Attorney the determination of who is the "client" for purposes of CRPC, Rule 1.13. Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
21. Where the City Attorney determines the Council is the client, it will notify the Council of the waiver request. If the City Attorney receives requests from four or more councilmembers, the waiver request will be placed on the Council open session agenda for the Council's consideration and vote. Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
22. If at least four Councilmembers do not ask to have the request placed on the agenda, the Mayor, in consultation with the City Attorney, is authorized to consider the request. Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed**.

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
23. If the waiver request is placed on the Council agenda, the public can provide its input during the public comment portion of the Council meeting, just as it can comment on any matter within the Council's jurisdiction, regardless of whether it is on the Council agenda. In all other cases, the Council Policy authorizes the Mayor, in consultation with the City Attorney, to consider the waiver requests. Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
24. The Mayor and City Attorney are authorized by the Charter to handle certain waiver requests even without a delegation of authority from the Council. In this regard, the Charter expressly authorizes the City Attorney to "perform all services incident to the legal department" or"other duties of a legal nature." Supporting Evidence: *San Diego City Charter§ 40, attached as Exhibit B.*	**Disputed.** Under the City Charter, the City Council has the sole authority to hire ***outside attorneys***, which makes City Council "the client" for purposes of considering conflict-waiver requests by outside lawyers. *See* Add'l Fact 42, *infra.*
25. The Charter defines the respective roles of the Mayor and the Council. Supporting Evidence: *Charter §§ 11, 12, 28, 260, 265, 270, attached as Exhibit B.*	**Undisputed**.
26. Under the Charter, the Mayor is generally responsible for the day-to-day administrative affairs of the City while the Council is the legislative body and sets policy. Supporting Evidence: *Charter §§11, 12, 28, 260, 265, 270, attached as Exhibit B.*	**Undisputed.**
27. The following matters fall under the Mayor's authority: administrative matters, such as negotiations; code enforcement; matters involving appointments; matters that do not involve current litigation with the City where the estimated exposure is greater than $50,000; land use negotiations; real property negotiations. Supporting Evidence: *Charter§§ 28, 265, attached as Exhibit B.*	**Undisputed.**

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
28. Pursuant to the Council Policy, the Mayor is only to consider and grant waiver requests "consistent with the factors articulated in this Policy. The Council Policy then provides guidelines for the Mayor to use to evaluate the waiver request, including whether: "(1) waiver of the conflict does not pose a risk of detrimental impact to the City; and (2) the conflicted attorney, by virtue of his or her representation of the City, obtained no confidential information that is material to the matter." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
29. The Council Policy expressly states that the Council "may delegate its waiver authority as appropriate under this Policy." Supporting Evidence: *Council Policy, attached as Exhibit A.*	**Undisputed.**
30. Frye attached to her First Amended Complaint numerous waiver requests that were obtained from the City pursuant to her CPRA request or pursuant to discovery in this matter. Supporting Evidence: *Council Policy1 attached as Exhibit A.*	**Undisputed**.
31. The City admits it failed to produce all discloseable documents in response to Frye's CPRA request prior to the filing of this lawsuit. Supporting Evidence: *Declaration of Catherine Richardson, attached as Exhibit E, ¶ 19; Emails between Catherine Richardson and Cory Briggs, attached as Exhibit L; Waiver requests, attached as Exhibit D.*	**Undisputed**.

Moving Party's Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Supporting Evidence
32. Although that failure was inadvertent, the filing of this lawsuit, and the subsequent discovery requests by Frye, resulted in the discovery of additional waiver requests that were responsive to Frye's original CPRA request. Supporting Evidence: *Declaration of Catherine Richardson, ¶ 20; Waiver requests, attached as Exhibit D; City's Supplemental Response to Deposition Notice of City Person Most Knowledgeable and Request for Production of Documents, attached as Exhibit M*	**Partially Disputed.** Plaintiff agrees that this lawsuit resulted in the production of waiver requests that were not disclosed before the lawsuit was filed. However, there is no evidence that ***all*** responsive waiver requests have been produced. Furthermore, Plaintiff disputes that the failure was "inadvertent." There is no competent evidence that the failure was inadvertent. The sole evidence to support the "inadvertent" proposition is an unverified response to a deposition notice signed only by one of Defendants' attorneys. This very practice – *viz.*, having the attorney represent what happened without a competent witness providing evidence – was rejected by this very Department as reported (and affirmed) in *Sukumar v. City of San Diego*, 14 Cal. App. 5th 451 (2017).
33. Those additional waiver requests were produced by the City to Frye. Supporting Evidence: *Declaration of Catherine Richardson, ¶20; Waiver requests, attached as Exhibit D; City's Supplemental Response to Deposition Notice of City Person Most Knowledgeable and Request for Production of Documents, attached as Exhibit M*	**Undisputed.**

Plaintiff's Undisputed Additional Material Facts and Supporting Evidence	Moving Party's Response and Supporting Evidence
34. Section 11 of the San Diego City Charter states: "All legislative powers of the City shall be vested, subject to the terms of this Charter and of the Constitution of the State of California, in the Council, except such legislative powers as are reserved to the people by the Charter and the Constitution of the State." Supporting Evidence: Briggs Decl., ¶ 1; Ex.1.	

Plaintiff's Undisputed Additional Material Facts and Supporting Evidence	Moving Party's Response and Supporting Evidence
35. Section 12(a) of the San Diego City Charter states: "The Council shall be the legislative body of the City and each of its members shall have the right to vote upon all questions before it." Supporting Evidence: Briggs Decl., ¶ 1; Ex.1.	
36. Section 270(a) of the San Diego City Charter states in part: "The Council shall be composed of nine councilmembers elected by district. The Council shall be the legislative body of the City." Supporting Evidence: Briggs Decl., ¶ 2; Ex.2.	
37. Section 270(c) of the San Diego City Charter states in part: "No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of five members of the Council." Supporting Evidence: Briggs Decl., ¶ 2; Ex.2.	
38. Section 28 of the San Diego City Charter states in part: "The Manager shall execute all contracts for the Departments under his control." Supporting Evidence: Briggs Decl., ¶ 3; Ex 3.	
39. Section 260 of the San Diego City Charter states: "All executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX shall be transferred to, assumed, and carried out by the Mayor." Supporting Evidence: Briggs Decl., ¶ 2; Ex.2.	
40. Section 265(a) of the San Diego City Charter states: "The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for purpose of serving civil process, for the signing of all legal instruments and documents, and by the Governor for military purposes." Supporting Evidence: Briggs Decl., ¶ 2; Ex.2.	

Plaintiff's Undisputed Additional Material Facts and Supporting Evidence	Moving Party's Response and Supporting Evidence
41. Section 265(b) of the San Diego City Charter states in part: "In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260, the Mayor shall have the following additional rights, powers, and duties: * * * (6) To attend and be heard at any closed session meeting of the Council, but not the right to vote at such meetings. When present, the Mayor shall preside over closed session. When the Mayor does not attend closed session, the Presiding Officer of the Council shall chair the closed session meeting." Supporting Evidence: Briggs Decl., ¶ 2; Ex.2.	
42. Section 40 of the San Diego City Charter states in part: "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." Supporting Evidence: Briggs Decl., ¶ 3; Ex. 3.	
43. Section 216.1(b)(1) of the San Diego City Charter states: "The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Supporting Evidence: Briggs Decl., ¶ 4; Ex. 4.	
44. Section 216.1(b)(2) of the San Diego City Charter states: "A statute, court rule, or other authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule or other authority adopted after the effective date of this Section that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." Supporting Evidence: Briggs Decl., ¶ 4; Ex. 4.	

Plaintiff's Undisputed Additional Material Facts and Supporting Evidence	Moving Party's Response and Supporting Evidence
45. Addendum D to the City Attorney's "Procedure for Approving or Denying Conflict of Interest Waivers," labeled "DRAFT LETTER TO COUNCILMEMBERS SENT UPON RECEIPT OF A REQUEST FOR WAIVER," states in the body: "The enclosed from [SENDER], dated [DATE], requests the City waive an attorney conflict of interest pursuant to California Code of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter. [¶] As provided in Council Policy No. 000-34, please notify the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34." Supporting Evidence: Briggs Decl., ¶ 5; Ex. 5.	
46. The June 9, 2006 staff report for the open- and closed-session meetings of the San Diego City Council, "WAIVER OF ATTORNEY CLIENT PRIVILEGE," listed at least 12 items on which the City Council considered whether to waive the attorney-client privilege. Supporting Evidence: Briggs Decl., ¶ 6; Ex. 6.	
47. San Diego County Superior Court case no. 37-2017-00023649-CU-MC-CTL was a California Public Records Act lawsuit in which the petitioner sought to compel the City of San Diego's disclosure of a legal memorandum written by the City Attorney to the Mayor and the City Council. In a brief to this Court, the City claimed that the memorandum was subject to the attorney-client privilege and asserted: "The holder of attorney-client privilege regarding the June 15, 2017 Confidential Memo is the City Council." Supporting Evidence: Briggs Decl., ¶ 7; Ex. 7.	

Plaintiff's Undisputed Additional Material Facts and Supporting Evidence	Moving Party's Response and Supporting Evidence
48. Section 1(a) of Senate Bill 1732 (Romero 2008) states as follows: "(a) The Legislature hereby declares that it disapproves the court's holding in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition." Supporting Evidence: Briggs Decl., ¶ 8; Ex.8.	
49. San Diego City Council Resolution R-311286 was passed on August 4, 2017. It does not contain the word "find," "finds," or "finding." Supporting Evidence: Briggs Decl., ¶ 9; Ex.9.	
50. The City has not produced a single witness to testify at a deposition about the completeness of the records produced thus far, despite Plaintiff's service of a deposition notice and an amended deposition notice on the City. Supporting Evidence: Briggs Decl., ¶ 10.	

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Declaration of Cory J. Briggs

DECLARATION OF CORY J. BRIGGS

I, Cory J. Briggs, am over the age of eighteen and if called as a witness in this proceeding will testify as follows:

0. I am the sole shareholder of Briggs Law Corporation, which is the law firm that has represented Plaintiff and Petitioner Donna Frye in this lawsuit.

1. Attached hereto as Exhibit 1 is a true and correct copy of San Diego City Charter Article III. I obtained it from the City's website in the ordinary course of business.

2. Attached hereto as Exhibit 2 is a true and correct copy of San Diego City Charter Article XV. I obtained it from the City's website in the ordinary course of business.

3. Attached hereto as Exhibit 3 is a true and correct copy of San Diego City Charter Article V. I obtained it from the City's website in the ordinary course of business.

4. Attached hereto as Exhibit 4 is a true and correct copy of San Diego City Charter Article XIV. I obtained it from the City's website in the ordinary course of business.

5. Attached hereto as Exhibit 5 is a true and correct copy of Addendum D to the City Attorney's "Procedure for Approving or Denying Conflict of Interest Waivers." I obtained it from the City though discovery in this lawsuit.

6. Attached hereto as Exhibit 6 is a true and correct copy of the staff report for the San Diego City Council's closed- and open-session meetings on June 9, 2006. I obtained it from the City's website in the ordinary course of business.

7. Attached hereto as Exhibit 7 is a true and correct copy of the City of San Diego's Opposition to Petition for Writ of Mandate under the California Public Records Act, filed in San Diego County Superior Court case no. 37-2017-00023649-CU-MC-CTL. I obtained it in the ordinary course of business from the City during the pendency of that lawsuit, as I was the attorney of record for the petitioner in the lawsuit.

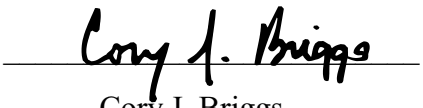
8. Attached hereto as Exhibit 8 is a true and correct copy of Senate Bill 1732 (Romero 2008). I obtained it from the California Legislature's website in the ordinary course of business.

9. Attached hereto as Exhibit 9 is a true and correct copy of San Diego City Council Resolution R-311286. I obtained it from the City of San Diego's website in the ordinary course of business.

10. In this lawsuit, I served a deposition notice on the City of San Diego's person(s) most knowledgeable in order to find out under oath, among other things, whether all responsive public records have been produced in this lawsuit. After meeting and conferring with deputy city attorney David Karlin, I served an amended deposition notice on the City. The City has always refused to produce a witness for deposition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 26, 2019.



Cory J. Briggs

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 1

ARTICLE III

LEGISLATIVE POWER

Section 11: Legislative Power

All legislative powers of the City shall be vested, subject to the terms of this Charter and of the Constitution of the State of California, in the Council, except such legislative powers as are reserved to the people by the Charter and the Constitution of the State.

Section 11.1: Legislative Power — Nondelegable

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California applies to the City Council of The City of San Diego, so that its members must not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including the City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy, except where authorized by the Charter.

The City Council must annually adopt an ordinance establishing salaries for all City employees, except the City's elective officers, not later than May 30 of each year after considering all relevant evidence, including the needs of the residents of the City of San Diego for municipal services, the ability of the residents to pay for those services, local economic conditions and other relevant factors as the City Council deems appropriate. The City Council must give priority in the funding of municipal services to the need of the residents for police protection in considering adoption of this salary ordinance and the annual budget ordinance, and must comply with any collective bargaining laws binding on the City as a public agency employer.

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for City employees extends to any scheme or formula which seeks to fix the compensation of City of San Diego employees, except City elective officers, at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition shall also extend to any scheme or formula which seeks to fix, establish, or adjust the compensation of City of San Diego employees,

except City elective officers, at the level of the largest cities in California or the State of California.

City elective officers will receive annual salaries based on the salary paid to Superior Court judges by the State of California. The Chief Financial Officer is responsible for determining the State salary of Superior Court judges and for setting and adjusting the salaries of the City Councilmembers, Mayor, and City Attorney, as provided in sections 12.1, 24.1, and 40, respectively.

(Addition voted 06-03-1980; effective 07-16-1980.)
(Amendment voted 11-04-1980; effective 12-31-1980.)
(Amendment voted 06-03-1986; effective 09-08-1986.)
(Amendments voted 11-06-2018; effective 12-24-2018.)
Prior Language

Section 11.2: Legislative Power — Memorandum of Understanding

Notwithstanding any provisions of this Charter to the contrary, nothing in the Charter shall be construed to preclude the Council from entering into a multiple year memorandum of understanding with any recognized City employee organization concerning wages, hours and other terms and conditions of employment if, in the prudent exercise of legislative discretion as provided in this Charter, the Council determines it is in the best interests of the City to do so; and further provided that said exercise of legislative discretion is expressed affirmatively by a two-thirds vote of the entire Council. *(Addition voted 06-03-1986; effective 09-08-1986.)*

Section 12: The Council

(a) The Council shall be the legislative body of the City and each of its members shall have the right to vote upon all questions before it.

(b) Council members shall hold office for the term of four (4) years from and after 10 a.m. on the tenth day of December next succeeding their election and until their successors are 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.

(c) Notwithstanding any other provision of this Charter, no person shall serve more than two four-year terms as a Council member. If for any reason a person serves a partial term as Councilmember in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision.

(d) Upon any redistricting pursuant to the provisions of this Charter, incumbent Council members will continue to represent the district they were elected to serve for the remainder of their current term. At the next municipal primary and general elections

following a redistricting, Council members shall be elected from those districts not represented and from those districts represented by incumbent Council members whose terms expire as of the general election in that year. If, as a result of any redistricting, more than a simple majority of the City Council as redistricted shall be elected at either the municipal primary or general election next following any such redistricting, the City Council prior to any such election shall designate one or more new districts for which the initial council term shall be two years in order to retain staggered terms for Council members.

(e) It is the duty of the Council-members 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.

(f) Council-members 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.

(g) Council- members 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 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.

(Amendment voted 11-08-1949; effective 12-20-1949.)
(Amendment voted 06-05-1956; effective 01-10-1957.)
(Amendment voted 11-06-1962; effective 01-21-1963.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 11-05-1974; effective 12-01-1975.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
(Amendment voted 11-06-1979; effective 12-17-1979.)
(Amendment voted 11-08-1988; effective 04-03-1989.)
(Amendment voted 11-06-1990; effective 02-19-1991.)
(Amendment voted 06-02-1992; effective 07-13-1992.)
(Amendment voted 11-03-1992; effective 12-18-1992.)
(Amendment voted 06-07-1994; effective 08-18-1994.)
(Section 12(a) was superseded by section 270 from 01-01-2006 through 07-30-2010.)
(Amendment voted 06-08-2010; effective 07-30-2010; see section 270.)
(Amendment voted 06-03-2014; effective 07-24-2014.)
(Amendment voted 06-07-2016; effective 07-18-2016.)
(Amendment voted 11-08-2016; effective 12-19-2016.)

(Amendments voted 11-06-2018; effective 12-24-2018.)
Prior Language

Section 12.1: Councilmanic Salaries

Effective December 10, 2020, the salary paid to the City Councilmembers will be 60 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California. Effective December 10, 2022, the salary paid to the City Councilmembers will be 75 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California.

(Addition voted 11-06-1973; effective 12-07-1973.)
(Amendments voted 11-06-2018; effective 12-24-2018.)
Prior Language

Section 13: Meetings of the Council

(Amendment voted 11-06-1962; effective 01-21-1963.)
(Section 13 was superseded by section 270 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see section 270.)

Prior Language

Section 14: Council Rules

The Council shall be the judge of the election and qualification of its members, and in such cases, shall have power to subpoena witnesses and compel the production of all pertinent books, records and papers; but the decision of the Council in any such case shall be subject to review by the courts. The Council shall determine its own rules and order of business. It shall have power to compel the attendance of absent members, and may punish its members for disorderly behavior after notification of the charge and opportunity to be heard in defense.

Section 15: Quorum

A majority of the members elected to the Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. Except as otherwise provided herein the affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present. No member shall be

excused from voting except on matters involving the consideration of his own official conduct or in which his own personal interests are involved.

Section 16: Introduction and Passage of Ordinances and Resolutions

(Amendment voted 03-10-1953; effective 04-20-1953.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
(Section 16 was superseded by sections 275, 280, 285 and 290 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see sections 275, 280, 285 and 290.)
Prior Language

Section 17: When Ordinances and Resolutions Take Effect. Emergency Measures

(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Section 17 was superseded by section 295 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see section 295.)
Prior Language

Section 18: Authentication and Publication of Ordinances and Resolutions

Upon its final passage each ordinance or resolution shall be authenticated by the signatures of the Mayor and the City Clerk and shall be recorded in a book kept for that purpose. Within fifteen days after final passage the title and number of each ordinance or resolution of a general nature, together with a digest thereof prepared by the City Attorney, shall be published at least once in such manner as may be provided by this Charter or by ordinance. The publication shall be accompanied by the notice that the full text of the ordinance or resolution is available for perusal in the office of the City Clerk.
(Amendment voted 11-05-1974; effective 12-01-1975.)
(Amendment voted 11-07-1978; effective 01-12-1979.)
Prior Language

Section 19: Effect of Other Ordinances

All ordinances and resolutions in force at the time this Charter takes effect, not inconsistent with its provisions, shall continue in force until amended or repealed.

Section 20: Codification of Ordinances

The Council may by ordinance codify all of the ordinances of a general nature of the City into a Municipal Code. When so codified such Municipal Code and all sections thereof shall be admissible in all courts as prima facie evidence of the due passage and publication of the ordinances as codified.
(Amendment voted 03-10-1953; effective 04-20-1953.)
Prior Language

Section 21: Courts

(Repeal voted 03-10-1953; effective 04-20-1953.)
Prior Language

Section 22: Interference by Individual Members of Council with Administrative Service Prohibited

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Section 22 was superseded by sections 270(g) and 270(h) from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see sections 270(g) and 270(h).)
Prior Language

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.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 11-08-1988; effective 04-03-1989.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 2

ARTICLE XV

Strong Mayor
Form of Governance

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-08-2010; effective 07-30-2010.)

Section 250: Purpose and Intent

The purpose of this Article is to implement a form of governance commonly known as a Strong Mayor form of government.
(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
Prior Language

Section 255: Operative Date; Sunset of Article; Future Action by Voters

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
(Repeal voted 06-08-2010; effective 07-30-2010.)
Prior Language

Section 260: Integration of Article with Charter

All executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX shall be transferred to, assumed, and carried out by the Mayor.
(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
Prior Language

Section 265: The Mayor

(a) The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for purpose of serving civil process, for the signing of all legal instruments and documents, and by the Governor for military purposes.

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260, the Mayor shall have the following additional rights, powers, and duties:

(1) To be the chief executive officer of the City;

(2) To execute and enforce all laws, ordinances, and policies of the City, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the City. Nothing in this section shall be interpreted or applied to add or subtract from powers conferred upon the City Attorney in Charter sections 40 and 40.1;

(3) To recommend to the Council such measures and ordinances as he or she may deem necessary or expedient, and to make such other recommendations to the Council concerning the affairs of the City as the Mayor finds desirable;

(4) To attend and be heard at any regular or special open session meeting of the Council, but not the right to vote at such meetings;

(5) To approve or veto actions passed by the Council in open session, pursuant to sections 280 and 290;

(6) To attend and be heard at any closed session meeting of the Council, but not the right to vote at such meetings. When present, the Mayor shall preside over closed session. When the Mayor does not attend closed session, the Presiding Officer of the Council shall chair the closed session meeting;

(7) Sole authority to appoint the City Manager, subject to Council confirmation;

(8) Sole authority to direct and exercise control over the City Manager in managing those affairs of the City under the purview of the Mayor as expressly permitted in the Charter;

(9) Sole authority to dismiss the City Manager without recourse;

(10) Notwithstanding contrary language in Charter sections 30, 57 or 58, authority to dismiss the Chief of Police or the Chief of the Fire Department, subject only to a right for these city officials to appeal to the City Council to overturn the Mayor's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Mayor. The City Clerk shall thereafter

cause the appeal to be docketed at a regular open meeting of the City Council no later than 30 days after the appeal is filed with the Clerk;

(11) As provided for in Charter sections 41 and 43, the authority to appoint members of City boards, commissions, and committees, subject to Council confirmation;

(12) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor;

(13) To cooperate fully with the Council and the Office of Independent Budget Analyst, including but not limited to, supplying requested information concerning the budget process and fiscal condition of the City to the Council and the Office of Independent Budget Analyst; and

(14) To propose a budget to Council and make it available for public review, no later than April 15.

(c) On or before the 15th day of January of each year, the Mayor shall communicate by message to the City Council a statement of the conditions and affairs of the City, and make recommendations on such matters as he or she may deem expedient and proper. In time of public danger or emergency, the Mayor shall take command of the police, maintain order, and enforce the law.

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

(e) When 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 in the office of the Mayor, to direct and exercise control over 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.

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
(Amendment voted 06-03-2014; effective 07-24-2014.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

Section 270: The Council

(a) The Council shall be composed of nine councilmembers elected by district. The Council shall be the legislative body of the City.

(b) Each councilmember shall have the right to vote upon all questions before the Council.

(c) No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of five members of the Council, unless a greater number is otherwise required by the Charter or other superseding law. All substantive actions of the Council shall be passed by adoption of an ordinance or resolution.

(d) The Council shall have the right to determine its own rules and order of business as provided for in Charter section 14, including a process for the selection of a presiding officer who shall have responsibility for chairing meetings of the Council and managing the docket process. Any such rules shall provide a process for the Mayor and independent department heads to propose matters for consideration by the Council in open session and a process for the City Attorney, Mayor, and Presiding Officer to coordinate the docketing of matters for consideration by the Council in any closed session of the Council.

(e) The Council shall have the right to establish committees of the Council and to establish advisory boards and citizen committees as provided for in Charter section 43.

(f) No member of the Council shall directly or indirectly by suggestion or otherwise attempt to influence or coerce the City Manager or other officer appointed or confirmed by the Council in the making of any appointment to, or removal from, any City office or employment, or the purchase of any supplies, or discuss directly or indirectly with any candidate for City Manager the matter of appointments to City Offices or employment, or attempt to exact any promises from such candidate relative to any such appointments.

(g) Except for the purpose of inquiry or communications in furtherance of implementing policies and decisions approved by resolution or ordinance of the Council, individual members of Council shall deal with the administrative service for which the Mayor is responsible only through the Mayor, the City Manager, or the Mayor's designees.

(h) Any City official or department head in the administrative service may be summoned to appear before the Council or any committee of the Council to provide information or answer any question.

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
(Amendment voted 06-07-2016; effective 07-18-2016.)
Prior Language

Section 275: Introduction and Passage of Ordinances and Resolutions

(a) Ordinances shall be introduced in the Council only in written form. An alteration necessary only to correct a typographical or clerical error or omission may be performed by the City Clerk with the written approval and concurrence of the City Attorney, so long as the alteration does not materially or substantially alter the contents, requirements, rights, responsibilities, conditions, or prescriptions contained in the original text of the ordinance. A typographical or clerical error shall include, but is not limited to, incorrect spelling, grammar, numbering, punctuation, transposed words or numbers, and duplicate words or numbers.

(b) All ordinances except annual appropriation ordinances and ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title.

(c) The following ordinances may be passed by the Council on the day of their introduction: ordinances making the annual tax levy; the annual appropriation ordinance; ordinances calling or relating to elections; ordinances recommended by the Mayor or independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance; ordinances establishing or changing the grade of a public highway; and emergency ordinances as defined by section 295 of this Charter. Other ordinances, however, shall be passed by the Council only after twelve calendar days have elapsed from the day of their introduction.

(d) Each ordinance shall be read in full prior to passage unless such reading is dispensed with by a vote of five members of the Council, and a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(e) The yeas and nays shall be taken upon the Council's passage of all resolutions and ordinances and entered upon the journal of the proceedings of the Council.

(f) The enacting clause of ordinances passed by the Council shall be "Be it ordained by the Council of the City of San Diego." The enacting clause of ordinances submitted by initiative shall be "Be it ordained by the People of the City of San Diego."

(Added by vote on 11-02-2004; effective 01-01-2006.)

Section 280: Approval or Veto of Council Actions by Mayor

(a) The Mayor shall have veto power over all resolutions and ordinances passed by Council with the following exceptions:

(1) The Mayor's veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.

(2) The Mayor's veto power shall not extend to those matters where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented.

(3) Emergency Ordinances.

(4) The Annual Appropriations Ordinance.

(5) The Salary Ordinance, which instead shall be subject to veto in accordance with the process described in section 290.

(6) The Mayor's veto power shall not extend to the appointment, confirmation, or removal of members of the Audit Committee or the screening committee as provided for in section 39.1, or the City Auditor as provided for in section 39.2.

(b) Matters that are not subject to the Mayor's veto power shall be clearly indicated as such on the Council's agenda and within the body of the resolution or ordinance, which, pursuant to section 40, shall be signed as to form and legality by the City Attorney.

(c) The following shall apply to each resolution and ordinance that has been passed by the Council and is subject to the Mayor's veto:

(1) Each such resolution or ordinance shall, within forty-eight hours of passage, be transmitted to the Mayor by the City Clerk with appropriate notations of the action taken by the Council.

(2) The Mayor shall act upon each resolution or ordinance within ten business days of receiving the City Clerk's transmittal.

(3) The Mayor shall either approve the resolution or ordinance by signing and returning it to the City Clerk within the specified time limit, or shall veto any resolution or ordinance and return it to the City Clerk with his or her written objections within the specified time limit.

(4) Failure to return the resolution or ordinance within the specified time limit shall constitute approval and such resolution or ordinance shall take effect without the Mayor's signed approval. The City Clerk shall note this fact on the official copy of such resolution or ordinance.

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
Prior Language

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. While the Council consists of eight members, and if at least five members of the Council vote in favor of passage after reconsideration, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required by this Charter or other superseding law to pass any resolution or ordinance, such larger vote shall be required to override the Mayor's veto. When a ninth councilmember is elected and qualified, the number of votes needed to override the Mayor's veto shall increase to six votes for any action taken by the nine-member Council. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
Prior Language

Section 290: Council Consideration of Salary Ordinance

No later than April 15 of each year, the Council shall introduce a Salary Ordinance fixing the salaries of all officers and employees of the City in accordance with Charter section 70. The Salary Ordinance shall be proposed by the Mayor for Council introduction in a form consistent with any existing Memorandum of Understandings with recognized labor organizations, or otherwise in conformance with procedures governed by the Meyers-Milias-Brown Act or any other legal requirements governing labor relations that are binding upon the City. Upon introduction, the Salary Ordinance shall be transmitted to the Mayor.

(a) The Mayor shall, within five business days of receipt of the Salary Ordinance introduced by Council, either approve the ordinance as introduced or veto all or any specific provision within the ordinance.

(b) The Salary Ordinance shall be returned to the Council within the five business day period either approved by the Mayor or accompanied by a statement explaining any reasons for the veto. The Council shall thereafter have ten business

days within which to override the veto and pass the Salary Ordinance as introduced or otherwise accept the changes proposed by the Mayor in the veto statement and pass the ordinance at second reading with the changes proposed by the Mayor.

(c) The Salary Ordinance passed by Council shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.

(Added by vote on 11-02-2004; effective 01-01-2006.)
(Amendment voted 06-08-2010; effective 07-30-2010.)
(Amendment voted 06-07-2016; effective 07-18-2016.)
Prior Language

Section 295: When Resolutions and Ordinances Take Effect; Emergency Measures

(a) In the case of a resolution or ordinance for which the Mayor has veto power:

(1) The date of approval by the Mayor pursuant to section 280(c) shall be deemed the date of its final passage.

(2) If the time for approval or veto by the Mayor has expired and no action has been taken by the Mayor, the date of expiration of that time shall be deemed the date of its final passage.

(3) If a resolution or ordinance is adopted by Council overriding the Mayor's veto, then the date of Council's override vote shall be deemed the date of final passage.

(b) In the case of a resolution or ordinance for which the Mayor has no veto power, the date of passage by the Council shall be deemed the date of its final passage.

(c) Resolutions shall become effective immediately upon their final passage, unless otherwise stated therein.

(d) Ordinances making the annual tax levy, the annual appropriation ordinances, ordinances calling or relating to elections, and emergency measures, shall take effect at the time indicated therein. All other ordinances passed by the Council shall take effect at the time indicated therein, but not less than thirty calendar days from the date of their final passage. Ordinances adopted by vote of the electors shall take effect at the time indicated therein or the date the final canvass is issued by the County Registrar of Voters, whichever occurs later.

(e) An emergency measure is an ordinance to provide for the immediate preservation of the public peace, property, health, or safety, in which the emergency claimed is set forth and defined in the preamble thereto. The affirmative vote of at least six members elected to the Council shall be required to pass any ordinance as an emergency measure. No measure making or amending a grant, renewal, or

extension of a franchise or other special privilege shall ever be passed as an emergency measure. No situation shall be declared an emergency by the Council except as defined in this section, and it is the intention of this Charter that the courts shall strictly construe compliance with such definition.

(Added by vote on 11-02-2004; effective 01-01-2006.)

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 3

ARTICLE V

(Effective 01-01-2006, all executive authority, power, and responsibilities conferred upon the City Manager in this Article were transferred to the Mayor. See section 260.)

EXECUTIVE AND ADMINISTRATIVE SERVICE

Section 26: Administrative Code

The existing Departments, Divisions and Boards and existing Offices of the City Government are hereby continued unless changed by the provisions of this Charter or by ordinance of the Council. The Council shall by ordinance, by majority vote, adopt an administrative code providing for the detailed powers and duties of the administrative offices and departments of the City Government, based upon the provisions of this Charter. Thereafter, except as established by the provisions of this Charter, the Council may change, abolish, combine, and rearrange the departments, divisions and boards of the City Government provided for in said administrative code, but such ordinance creating, combining, abolishing or decreasing the powers of any department, division or board shall require a vote of two-thirds of the members elected to the Council. The Council may by ordinance, if authorized so to do by the general law of the State, provide that any function of the City may be performed by the County or that any function of the County may be performed by the City, provided the respective legislative bodies authorize and approve such transfer and assumption of function. There may also be established a combined City and County district for the performance of any function.
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-08-1977; effective 01-20-1978.)
Prior Language

Section 26.1: Public Services Required

It shall be the obligation and responsibility of The City of San Diego to provide public works services, water services, building inspection services, public health services, park and recreation services, library services, and such other services and programs as may be desired, under such terms and conditions as may be authorized by the Council by ordinance.
(Addition voted 09-17-1963; effective 02-11-1964.)

Section 27: The City Manager

(Amendment voted 12-19-1933; effective 01-18-1935.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Section 27 was superseded by sections 260 and 265 from 01-01-2006 through 07-30-2010.)
(Repeal voted 06-08-2010; effective 07-30-2010; see sections 265(b)(7), (8), and (9).)
Prior Language

Section 28: Duties of the Manager

It shall be the duty of the Manager to supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter; to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; to keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as may be required by that body, including an annual report of all the Departments of the City; to see that the ordinances of the City and the laws of the State are enforced; and to perform such other duties as may be prescribed by this Charter or required of him by ordinance or resolution of the Council. Except as otherwise provided in this Charter, all other administrative powers conferred by the laws of the State upon any municipal official shall be exercised by the Manager or persons designated by him. He shall assume the position of Director of any Department under his control for which a Director has not been appointed. The Directors, or heads of the administrative Departments under the Manager shall be immediately responsible to him for the efficient administration of their respective Departments. The Manager may set aside any action taken by a Director or Department subordinate responsible to him, and may supersede him in authority in the functions of his office or employment. Where no provision has been made by ordinance authorizing a subordinate official to act as departmental head in case of a vacancy, the Manager may designate an interim acting head or perform personally the functions of the office. The Manager, as Chief Budget Officer of the City, shall be responsible for planning the activities of the City government and for adjusting such activities to the finances available. To this end he shall prepare annually a complete financial plan for the ensuing year and shall be responsible for the administration of such a plan when adopted by the Council. He shall be charged with the bringing together of estimates covering the financial needs of the City, with the checking of these estimates against the information relative to past expenditures and income, with the preparation of the budget document and supporting schedules and with the presentation of the budget to the Council. He shall have the power to employ experts, or consultants to perform work or give advice connected with the Departments of the City when such work or advice is necessary in connection therewith. If the cost of hiring said expert or consultant exceeds a sum to be established by ordinance of the City Council, no such expert or consultant shall be hired

without approval of the Council. The Council shall provide sufficient funds in the annual appropriation ordinance or by supplemental appropriation ordinances for such purposes and shall charge such additional services against the appropriation of the respective Departments.

The Manager shall execute all contracts for the Departments under his control. He shall approve all requisitions and vouchers for said Departments in person or through such assistants as he may designate for the purpose.

The Manager may prescribe such general rules and regulations as he may deem necessary or expedient for the general conduct of the administrative Departments. The Director of each Department shall in like manner prescribe such rules and regulations as may be deemed necessary and expedient for the proper conduct of each Department, not inconsistent with the general rules and regulations prescribed by the Manager.

In order to expedite the work of any department or to adequately administer an increase in the duties which may devolve on any Department or to cope with periodic or seasonal changes, the Manager, subject to Civil Service regulations, is empowered to transfer employees temporarily from one Department to perform similar duties in another Department. Likewise each Department head shall have power to transfer employees from one Division to another within his Department.

The Manager may direct any Department or Division to perform work for any other Department or Division. Such powers to transfer employees or to direct the performance of work shall not apply to the Police or Fire Departments.

During January of each year the Manager shall present to the Council an annual report of the City's affairs for the previous fiscal year.

In case of general conflagration, rioting, flood, or other emergency menacing life and property, the Manager shall marshal all the forces of the different Departments of the City for the maintenance of the general security, and shall have the power to deputize or otherwise employ such other persons as he may consider necessary for the purpose of protecting the City and its residents. The Council may, however, in any such emergencies authorize the Mayor to take command of the police, maintain order and enforce the law.

And in such authorized emergencies the Manager shall be subordinate to and shall carry out such duties as may be assigned to him by the Mayor.
(Amendment voted 11-02-1976; effective 01-12-1977.)
Prior Language

Section 29: Responsibility of Manager - Powers of Appointment and Removal

The Manager shall be responsible to the Council for the proper administration of all affairs of the City placed in his charge, and to that end, subject to the Civil Service provisions of this Charter and except as otherwise provided herein, he shall have the power to appoint and remove all officers and employees in the administrative service of the City under his control; but the Manager may authorize the head of a Department or officer responsible to him to appoint and remove subordinates in such Department or office. Appointments made by, or under the authority of, the Manager, shall be on the basis of administrative ability and of the training and experience of such appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed sixty days. No person directly related to the City Manager by blood or marriage shall be eligible for employment unless such relative was in the employ of the City at the time of the appointment of the City Manager.
(Amendment voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 30: Removal of Unclassified Officers and Employees

Officers and employees in the unclassified service appointed by the Manager or other appointing authority not under control of the Manager, with the exception of Deputy City Attorneys, may be removed by such appointing authority at any time.

Appropriate rules and regulations shall be promulgated to establish procedures as may be necessary by which the dismissal provided for in this article shall be processed and effectuated. Procedures relating to the termination, suspension, and layoffs of Deputy City Attorneys as provided in Section 40 shall be established in compliance with the Meyers-Milias-Brown Act.

With the exception of Deputy City Attorneys, nothing contained herein shall be construed as in any way limiting the authority and power of the Manager or such other appointing authority not under the control of the Manager to remove any such unclassified officer or employee appointed or employed by them and any order effecting said removal shall be final and conclusive.
(Amendment voted 11-08-1977; effective 01-20-1978.)
(Amendment voted 11-02-2010; effective 12-22-2010.)
Prior Language

Section 31: Political Activities

(a) No officer or employee of the City, except elected officers and unsalaried members of commissions, shall during regular hours of employment take an active part opposing or supporting any candidates in any City of San Diego political campaign or make contributions thereto in behalf of any candidates, nor shall such person seek signatures to any petition seeking to advance the candidacy

of any person for any municipal office. Nothing in this section shall be construed to prevent any officer or employee, whether Classified or Unclassified, from seeking election or appointment to public office or from being active in State or Federal political campaigns, in any bond issue campaign including municipal bond issues, or from being active in local political campaigns.

(b) Every municipal employee shall prohibit the entry into any place under his control occupied for any purpose of the municipal government, of any person for the purpose of therein making, collecting, receiving, or giving notice of any political assessment, subscription, or contribution.

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-06-1979; effective 12-17-1979.)
Prior Language

Section 32: Right of Manager and Other Officers in Council

The Manager and such other officers of the City as may be designated by a vote of the Council may attend all meetings of the Council but shall have no vote therein. The Manager or other officer so selected shall have the right to take part in discussions or matters properly before the Council relating to his office or may participate in discussions in such Council meetings when requested so to do by a member of the Council or a committee thereof.

Section 32.1: Responsibility of Manager and Non-managerial Officers to Report to Council

The City Manager and all non-managerial officers of the City shall inform the Council of all material facts or significant developments relating to all matters under the jurisdiction of the Council as provided under this Charter except as may be otherwise controlled by the laws and regulations of the United States or the State of California. The Manager and all non-managerial officers shall also comply promptly with all lawful requests for information by the Council.
(Addition voted 06-02-1992; effective 07-13-1992.)

Section 33: Manager's Control Department
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 34: Budget Officer
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 35: Purchasing Agent

(Amendment voted 03-10-1953; effective 04-20-1953.)
(Amendment voted 11-04-1958; effective 02-19-1959.)
(Amendment voted 11-04-1975; effective 12-1-1975.)
(Repeal voted 11-08-2016; effective 12-19-2016.)
Prior Language

Section 36: City Engineer

(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 37: Personnel Director

The Personnel Director shall be appointed by the Civil Service Commission and shall have all powers and perform all duties prescribed for such Personnel Director in Section 116 of Article VIII. In addition thereto he shall exercise general supervision over the employment policy of the City, subject to the Civil Service provisions of this Charter and the directions of the Civil Service Commission. He shall keep a record of the personnel conditions in the City service and shall, upon the request of the Manager or of the Civil Service Commission, or on his own initiative, investigate problems relating to the securing of a better class of applicants for positions, and to the maintenance of efficiency among City Employees, and to any and all other matters relating to this department as may properly come before him.

The Personnel Director, with the approval of the Civil Service Commission and the Manager shall have jurisdiction to investigate working conditions of City service as they affect the health, welfare, efficiency, service and esprit de corps of the employees. He shall be accessible to any employee who shall desire to complain of any matter incident to his employment.

Section 38: City Clerk

The City Clerk shall be elected by the Council for an indefinite term and shall serve until his successor has been elected and qualified. He shall maintain all official records of the City, the custody of which is not provided for in this Charter or by ordinances of the City, including the journal of all proceedings of the Council and all its ordinances and resolutions.
(Amendment voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 38.1: Microfilming of Records.

(Addition voted 04-19-1949; effective 05-20-1949.)
(Repeal voted 11-04-1958; effective 02-19-1959.)
Prior Language

Section 39: Chief Financial Officer

The Chief Financial Officer shall be appointed by the Mayor and confirmed by the City Council for an indefinite term and shall serve until his or her successor is appointed and qualified. The Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by the Chief Financial Officer and approved by the Mayor and the Council. Subject to the direction and supervision of the Mayor, the Chief Financial Officer shall be responsible for the preparation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the Mayor and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Chief Financial Officer shall certify in writing that the money required for such contract, agreement, or obligation for such year is or will be in the treasury to the credit of the appropriation from which it is to be drawn and that it is otherwise unencumbered. He or she shall perform the duties imposed upon chief municipal fiscal officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the Mayor from transferring to other officers matters in charge of the Chief Financial Officer which do not relate directly to the finances of the City. The Chief Financial Officer shall prepare and submit to the Mayor such information as shall be required by the Mayor for the preparation of an annual budget. The Chief Financial Officer shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.
(Amendment voted 06-04-1974; effective 08-13-1974.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
(Amendment voted 06-07-2016; effective 07-18-2016.)
Prior Language

Section 39.1: Audit Committee

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of

the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three public members of the Audit Committee shall be appointed by the City Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the Independent Budget Analyst and two outside financial experts appointed by the other three members of the screening committee and confirmed by the City Council. The City Council may waive the requirement for appointment from a pool of at least two candidates when a sitting incumbent applies, and is eligible for reappointment. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The minimum professional standards for public members shall include at least 10 years of experience as a certified public accountant or as a certified internal auditor, or 10 years of other professional financial or legal experience in audit management. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Public members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

The Audit Committee shall have oversight responsibility regarding the City's auditing, internal controls and any other financial or business practices required of this Committee by this Charter. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council may specify additional responsibilities and duties of the Audit Committee by ordinance as necessary to carry into effect the provisions of this section.

(Addition voted 06-03-2008; effective 07-08-2008.)
(Amendment voted 11-06-2018; effective 12-24-2018)
Prior Language

Section 39.2: Office of City Auditor

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public

accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee. Upon the recommendation of the Audit Committee, the City Auditor may be removed for cause by a vote of two-thirds of the members of the Council. The City Auditor shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall follow Government Auditing Standards. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon any officer, agent or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public in accordance with the requirements of the California Public Records Act. *(Addition voted 06-03-2008; effective 07-08-2008.)*

Section 39.3: Independent Budget Analyst.

Notwithstanding any other provision of this Charter, the City Council shall have the right to establish by ordinance an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall appoint the Independent Budget Analyst, who shall serve at the pleasure of the Council and may be removed from office by the Council at any time. Any person serving as the Independent Budget Analyst shall have the professional qualifications of a college degree in finance, economics, business, or other relevant field of study or relevant professional certification. In addition, such appointee shall have experience in the area of municipal finance or substantially similar equivalent experience. The Independent Budget Analyst shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

(Addition voted 06-03-2008; effective 07-08-2008.)

Section 40: City Attorney

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, 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.

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.

Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California, provided that the salary of the City Attorney may not be decreased during a term of office.

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.

(Amendment voted 04-20-1943; effective 05-04-1943.)
(Amendment voted 04-15-1947; effective 05-01-1947.)
(Amendment voted 11-04-1958; effective 02-19-1959.)
(Amendment voted 11-06-1962; effective 01-21-1963.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
(Amendment voted 06-02-1992; effective 07-13-1992.)
(Amendment voted 11-02-2004; effective 01-21-2005.)
(Amendment voted 11-02-2010; effective 12-22-2010.)
(Amendment voted 06-03-2014; effective 07-24-2014.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
(Amendment voted 11-06-2018; effective 12-24-2018)
Prior Language

Section 40.1: Concurrent Jurisdiction of City Attorney with District Attorney.

The City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors.
(Addition voted 03-10-1953; effective 04-20-1953.)

Section 41: Commissions

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 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.

Notwithstanding any other provisions of this section, appointments to this Commission shall be made so that not more than three (3) members are appointed in any one year. To accomplish this, initial appointments to this Commission, after the effective date of this amendment, shall be made so as to provide that the terms of office of two (2) members shall be for four (4) years; two (2) members for three (3) years; two (2) members for two years; and one (1) member for one (1) year.

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

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 03-05-2002; effective 04-24-2002.)
(Amendment voted 11-02-2004; effective 01-21-2005.)
Prior Language

Section 41.1: Salary Setting Commission

(Addition voted 11-06-1973; effective 12-07-1973.)
(Repeal voted 11-06-2018; effective 12-24-2018)
Prior Language

Section 42: Membership Selection

The appointing authority in selecting appointees to commissions, boards, committees or panels shall take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community.
(Amendment voted 04-15-1947; effective 05-01-1947.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Repeal voted 11-04-1969; effective 01-29-1970.)
(Addition voted 11-6-1973; effective 12-7-1973.)
Prior Language

Section 43: Advisory Boards and Committees

(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.

(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
(Amendment voted 11-08-1988; effective 04-03-1989.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

Section 43.1: Commissions, Boards, Committees - Appointments

(Addition voted 09-17-1963: effective 02-11-1964.)
(Repeal voted 11-04-1969; effective 01-29-1970.)
Prior Language

Section 44: Directors of Departments

(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 45: City Treasurer

The Manager shall appoint the Treasurer. He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

The Treasurer shall receive, have the custody of, and disburse City moneys upon the warrant or check-warrant of the Chief Financial Officer under the provisions of section 53911 of the Government Code of the State of California. He or she shall keep such books and records as are necessary for the recording of all receipts and expenditures, together with a record of money in City depositories. Every Department officer, or institution which receives money directly from the public, shall deposit the same daily with the Treasurer, unless otherwise authorized by ordinance. The Treasurer shall demand and receive from the County Tax Collector moneys collected by him or her for use of the City. And it shall be the duty of such County official to deposit such money monthly with the City Treasurer.

The Treasurer shall determine pursuant to the general law of the state, the selection of depositories for City funds. All interest collected on City funds shall be accounted for monthly by the Treasurer.

Whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law or ordinance, the Treasurer shall be authorized to demand and receive the same. When any claim shall not be collectible by other methods, he or she shall report the same to the City Manager and the City Attorney

for prosecution. When payment of a claim or any judgment thereon is made, he or she shall receive and receipt therefor in the name of the City.

The Treasurer shall issue notices for and collect special assessments previous to certification to the County Auditor, charges for permits for private use of public streets, and such other miscellaneous taxes, fees, assessments, licenses and privilege charges as may from time to time be assigned to him or her. He or she shall maintain a continuous inspection of the records and accounts of such taxes, licenses and privilege charges in order to effectuate their collection.

The Treasurer shall issue all permits and licenses except departmental permits and licenses which are by ordinance assigned to the particular Departments. Such permits and licenses shall be issued either directly by the Treasurer or upon specific authorization of the appropriate Department as may be required by ordinances, but all revenues derived therefrom shall be deposited with the Treasurer.
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 06-03-2008; effective 07-08-2008.)
Prior Language

Section 46: Department of Public Works. Street Superintendent
(Amendment voted 04-21-1953; effective 05-29-1953.)
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 47: Division of Streets
(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 48: Division of Sewers
(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 49: Division of Refuse Collection and Disposal
(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 50: Division of Public Buildings
(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 51: Division of Shops
(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 52: Division of Pueblo Lands and Unimproved City Property

(Repeal voted 04-21-1953; effective 05-29-1953.)

Prior Language

Section 53: Water Utility

There shall be included in the administrative organization of the City a separate utility to be known as the Water Utility. The financial information and records on which the accounts are to be kept shall be established and maintained by the City, in accordance with methods set forth in Section 109 of the City Charter.

All revenues of the Water Utility shall be deposited in a Water Utility Fund. The Manager shall include in the annual budget the estimated expenditure and reserve requirements of the Water Utility Fund. The City Council using such estimates as a basis shall include in the annual appropriation ordinance for the Water Utility Fund provision for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual obligations; reserves for future expansion of water utility plant; reserves for future water purchases. In addition thereto, the Council shall levy annually a tax sufficient to provide for the redemption of municipal bonds heretofore or hereafter issued for water purposes; together with a sum sufficient to pay the interest thereon. The amount of money necessary to be raised each year for the redemption of water bonds and the payment of interest thereon and for the retirement of any other funded or contractual indebtedness incurred by purchase or otherwise for the development, conservation or distribution of water shall be charged annually against the Water Utility on the accounts of the City. Only after providing the requirements for Water Utility purposes as set forth above may the City Council in the annual appropriation ordinance provide for the transfer to the General Fund of the City any excess revenues accruing to the Water Utility Fund. Such revenue transferred to the General Fund shall be available thereafter for use for any legal City purpose. All such surplus funds so transferred shall be credited on the accounts of the City as a reimbursement credit for the monies paid by the City each year for the redemption of Water Bonds and the payment of interest thereon, costs of services and facilities furnished to the water Utility by other City departments and funds, and an amount equal to the estimated loss in taxation which would be paid to the City by the Water Utility if it were not municipally owned, together with a reasonable profit on the City's investment in the water system.

The Council shall have power to employ special counsel for the purpose of advising and representing the City in all matters, proceedings and things relating to or concerning the development, impounding and distribution of water.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 03-11-1947; effective 03-24-1947.)
(Amendment voted 09-17-1963; effective 02-11-1964.)

Prior Language

Section 54: Harbor Department

(Amendment voted 03-23-1937; effective 04-14-1937.)
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 06-08-1954; effective 01-10-1955.)
(Amendment voted 06-07-1960; effective 01-09-1961.)
(Amendment voted 06-05-1962; effective 06-29-1962.)
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

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.

(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 03-11-1947; effective 03-24-1947.)
(Amendment voted 04-21-1953; effective 05-29-1953.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1975; effective 12-01-1975.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

Section 55.1: Mission Bay Park - Restrictions upon Commercial Development

Notwithstanding any other provision of this Charter to the contrary, the total land and water area of all leases in Mission Bay Park shall not exceed twenty-five percent (25%) of the total dedicated land area or six and one-half percent (6.5%) of the total dedicated water area respectively of the park without such lease being authorized or later ratified by vote of 2/3's of the qualified electors of the City voting at an election for such purpose.
(Amendment voted 11-03-1987; effective 12-17-1987.

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) *Capital Improvement* means physical assets, constructed or purchased, or the restoration of some aspect of a physical or natural asset that will increase its useful life by one year or more or which constitutes an environmental improvement of a natural asset.

(2) *Mission Bay Baseline Chart* shall be defined as the Mission Bay dredging plans on file with the City Clerk as Document No. OO-19776. It shall serve as the baseline for depths for navigable waters within Mission Bay. Depths may be increased or decreased for specific areas within Mission Bay only if, after review of these areas by the San Diego Fire Department or the *Mission Bay Park Improvement Fund Oversight Committee*, it is found that either the original depth no longer supports or ensures safe navigation, is inconsistent with the *Mission Bay Park Master Plan*, or needs to be modified in order to create sustainable shorelines. Any changes must be adopted by ordinance of the City Council and shall act as amendments to the original dredging plans.

(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) *Mission Bay Park Improvement Zone* means those areas encompassed within the boundaries of *Mission Bay Park*, Oceanfront Walk from the Mission Bay jetty to Crystal Pier and the adjoining seawall, coastal parks and ocean beaches contiguous thereto, Rose Creek from its terminus in Mission Bay to the southern end of the Santa Fe Road flood control channel, Tecolote Creek from its terminus in Mission Bay to the western end of the Tecolote Creek flood control channel and the San Diego River as it passes through the boundaries of *Mission Bay Park* as described herein. The boundaries of the San Diego River, Rose Creek and Tecolote Creek shall be the width of those waterways to the nearest property line.

(5) *Mission Bay Park Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *Mission Bay Park Improvement Zone*.

(6) *Mission Bay Park Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.

(7) *Mission Bay Park Lease Revenues* means all revenues collected by the City of San Diego from commercial and non-profit sources within *Mission Bay Park*, including but not limited to all monetary consideration received under leases of city owned property within *Mission Bay Park*, as well as revenue collected from contracts for concessions or any other revenues collected for the use of city owned property within *Mission Bay Park*. The term does not include revenue from the Mission Bay Golf Course, unless privately leased; mooring fees; any revenues from taxes including but not limited to Transient Occupancy Taxes, sales taxes, possessory interest taxes, property taxes; or permit fees such as park and recreation fees or special event fees to the extent those fees are levied to recover actual costs incurred by the City of San Diego.

(8) *Mission Bay Park Master Plan* means the Master Plan adopted by the City Council for Mission Bay Park in 1994, the Natural Resources Management Plan, and any amendments or updates that are subsequently adopted by the City Council or any such similar replacement plan that may be subsequently adopted by the City Council. For purposes of this Section, the definition shall also include adopted plans for areas located within the *Mission Bay Park Improvement Zone*.

(9) *San Diego Regional Parks* means those parks that serve regional residents and/or visitor populations as determined by ordinance of the City Council. *San Diego Regional Parks* shall initially include Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, and coastal beaches along with coastal parks contiguous thereto. For the purposes of this Section, this definition shall specifically exclude the *Mission Bay Park Improvement Zone*.

(10) *San Diego Regional Parks Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *San Diego Regional Parks*.

(11) *San Diego Regional Parks Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.

(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. Thirty-five percent (35%) of the *Mission Bay Park Lease Revenues* in excess of the threshold amount, or three million five hundred thousand dollars ($3,500,000) whichever is greater, shall be allocated to the *San Diego Regional Parks Improvement Fund* that solely benefits the *San Diego Regional Parks* and sixty-five percent (65%) of the *Mission Bay Park Lease Revenues* over the threshold amount, or the remainder of those revenues if less than 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*.

(1) To achieve these goals, all of the following identified priorities are intended to be authorized, 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, 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.

(2) After a priority project identified in (c)(1)(A-E) above has been 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 preclude completion of a greater priority project. The City Council shall be required to make findings that completion of a greater priority project will not be precluded by expending funds on a lesser priority project before approving said expenditure.

(3) Once the projects identified in (c)(1)(A-E) have 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-E) 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) Funds in the *San Diego Regional Parks Improvement Fund* may be expended only for non-commercial public *Capital Improvements* for the *San Diego Regional Parks* and only for park uses. Funds in the *San Diego Regional Parks 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 daily, weekly, monthly, or annual upkeep of the *San Diego Regional Parks*.

Priority for *Capital Improvements* hereunder shall be recommended by the *San Diego Regional Parks Improvement Fund Oversight Committee*, in accordance with the master plans for each of the *San Diego Regional Parks*, and approved by the City Council.

(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-E), 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), (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 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) The City of San Diego shall take all steps necessary to ensure the collection and retention of all *Mission Bay Park Lease Revenues* for purposes described herein and to utilize those revenues only for the purposes described herein and consistent with the priorities and intentions described herein. The City of San Diego may issue bonds, notes or other obligations to expedite the *Capital Improvements* contemplated herein, utilizing the revenue stream from *Mission Bay Park Lease Revenues* designated herein.

(g) The annual budgets allocated for park operations and maintenance in the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks* shall not be reduced at a greater rate or increased at a lesser rate relative to the overall annual budget of park and recreation as a result of monies available hereunder.

(h) The City of San Diego is encouraged to seek other sources of funding for the purposes of improving the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks*, including but not limited to grant funding from other governmental agencies, private individuals, or foundations. In the event the City of San Diego receives any such additional funds, they shall be in addition to, and shall not offset or reduce funds dedicated to the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* under this Section.

(i) Nothing contained herein shall prevent the City of San Diego from spending funds in excess of the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks* Fund for the purposes of improving the *Mission Bay Park Improvement Zone* or the *San Diego Regional Parks*.

(j) This Section shall take effect and be in force on July 1, 2009, and will expire on June 30, 2069. 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, 2069 a measure to amend the Charter to extend the effect of this Section for an additional 30 years.

(k) In the event of a conflict between any provision of Section 55.2 and any other provision of this Charter or the Municipal Code, Section 55.2 shall govern.

(Addition voted 11-04-2008; effective 12-16-2008.)
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

Section 56: Bureau of Safety

(Repeal voted 04-21-1953; effective 05-29-1953.)
Prior Language

Section 57: Police Department

The Police Department shall consist of a Chief of Police and such other officers, members and employees as the Council may from time to time prescribe by ordinance.

The Chief of Police shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council, provided, however, that the Chief of Police may be removed by the City Manager at any time in the manner provided for in Section 30 of Article V of this Charter.

The Chief of Police, with the approval of the City Manager, shall appoint, direct and supervise the personnel, subject to Civil Service regulation, have charge of the property and equipment of the department and exercise all powers and duties provided by general laws or by ordinance of the Council. The Chief of Police shall have all power and authority necessary for the operation and control of the Police Department.
(Amendment voted 11-06-1956; effective 01-10-1957.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Section 57 is modified by contrary language in section 265(b) effective 01-01-2006.)
Prior Language

Section 58: Fire Department

The Fire Department shall consist of a Chief of the Fire Department and such other officers, members and employees as the Council may from time to time prescribe by ordinance.

The Chief of the Fire Department shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council, provided, however, that the Chief of the Fire Department may be removed by the City Manager at any time in the manner provided for in Section 30 of Article V of this Charter. The Chief of the Fire Department shall have all power and authority necessary for the operation and control of the Fire Department and the protection of the lives and property of the people of the City from fire.

The Chief of the Fire Department, with the approval of the City Manager, shall direct and supervise the personnel. Members of the Fire Department shall be subject to all the Civil Service provisions of this Charter contained in Article VIII. This section shall not become effective until July 1, 1974.
(Amendment voted 11-06-1956; effective 01-10-1957.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-06-1973; effective 12-07-1973.)
(Section 58 is modified by contrary language in section 265(b) effective 01-01-2006.)
Prior Language

Section 59: Department of Inspection
(Amendment voted 04-17-1951; effective 05-03-1951.)
(Amendment voted 04-21-1953; effective 05-29-1953.)
(Amendment voted 06-08-1954; effective 01-10-1955.)
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 60: Department of Public Health
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 60.1: Plumbing Permits and Inspections Regulated by Council
(Addition voted 04-19-1949; effective 05-20-1949.)
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 60.2: Authority to Consolidate Department of Public Health with the County of San Diego
(Addition voted 11-04-1952; effective 01-17-1953.)
(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 61: Social Service Department
(Amendment voted 04-21-1953; effective 05-29-1953.)
(Repeal voted 09-17-1963; effective 02-11-1964.)

Prior Language

Section 62: Playground and Recreation Department

(Repeal voted 03-11-1947; effective 03-24-1947.)
Prior Language

Section 63: Library Department

(Repeal voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 64: Support of Educational and Cultural Institutions

The Council shall annually make appropriations for the support of all institutions of an educational, scientific, historical and cultural character, and which have a tendency to promote the welfare of the City and its inhabitants, which are now or which may hereafter be controlled by The City of San Diego and partially or wholly operated and maintained by said City for the benefit of its inhabitants.

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 4

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 211: Oath of Office

Every officer or member of a Committee, Board or of a Commission of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State to be filed and kept in the office of the City Clerk.
(Amendment voted 09-17-1963; effective 02-11-1964.)
(Amendment voted 11-04-1969; effective 01-29-1970.)
Prior Language

Section 212: Continuance of Present Officers

All persons holding office at the time the provisions of this Charter or any amendments thereto shall take effect shall continue in office and in the performance of their duties until provisions shall have been made in accordance therewith for the performance of such duties or the discontinuance of such office. The terms of all elective officers who are in office at the time this Charter or any amendments thereto become effective shall terminate on the tenth day of December following the holding of such election except as otherwise provided in this Charter.

The powers conferred and the duties imposed upon any Officer, Commission, Board, Committee or Department of the City by the laws of the State and by this Charter or ordinance shall be thereafter exercised and discharged by the Officer, Board, Committee or Department designated by this Charter or by ordinances passed by the Council, unless otherwise provided herein. The members of the Legislative body of The City of San Diego in office at the time the State Legislature ratifies and approves this Charter or any amendments thereto shall take the necessary action and do everything necessary or incidental for the purpose of holding the first election at which municipal officers are elected pursuant to the terms and provisions of this Charter or any amendments thereto.
(Amendment voted 11-06-1962; effective 01-21-1963.)
(Amendment voted 06-03-2014; effective 07-24-2014.)
Prior Language

Section 213: Continuing in Force Ordinances and Contracts

All ordinances not inconsistent with any of the provisions of this Charter or any amendments thereto shall continue in force until amended or repealed, and all contracts of The City of San Diego in force at the time of the adoption of this Charter or any amendments thereto, and not inconsistent with any of the provisions thereof, shall continue in force until completed, amended or rescinded.
(Amendment voted 04-22-1941; effective 05-08-1941.)
(Amendment voted 09-17-1963; effective 02-11-1964.)
Prior Language

Section 214: Reservation of Rights

The passage of this Act shall not affect any right accruing or accrued, or any suit, prosecution, or other legal proceedings pending at the time when it shall take effect as herein provided, and no penalty or forfeiture previously incurred shall be affected thereby.

Section 215: Publicity of Records

All books, records and accounts of every office and Department of the City shall be open to inspection by any citizen at all reasonable times and under reasonable regulations established by the Council, except such records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish.

Section 216: Copies of Records

Copies or extracts, duly certified, from said books and records open for inspection, shall be given by the officer having the same in custody to any person demanding the same who shall be charged for such copies or extracts, and for certification, the charge to be fixed by the Council.

Section 216.1: Access to Government Information

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this Section, shall be broadly construed if it furthers the

people's right of access, and narrowly construed if it limits the right of access. A statute, court rule or other authority adopted after the effective date of this Section that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this Section supersedes or modifies the right of privacy guaranteed by Section 1 of the California Constitution or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this Section supersedes or modifies any provision of this Charter or the California Constitution, including the guarantees that a person may not be deprived of life, liberty or property without due process of law, or denied equal protection of the laws.

(5) This Section does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this Section, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(Addition voted 11-02-2004; effective 01-21-2005.)

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 a court of competent jurisdiction for such actions shall forfeit his or her office or position.
(Amendment voted 11-08-2016; effective 12-19-2016.)
Prior Language

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 a court of competent jurisdiction for such actions shall forfeit his or her office or position.
(Amendment voted 11-08-2016; effective 12-19-2016.)

Prior Language

Section 219: Pueblo Lands

No sale of Pueblo Lands owned by The City of San Diego which are situated North of the North line of the San Diego River shall ever be valid and binding upon said City unless such sale shall have been first authorized by an ordinance duly passed by the Council and thereafter ratified by the electors of The City of San Diego at any special or general municipal election. The City Manager shall have authority to lease Pueblo Lands, provided that any lease for a term exceeding one year shall not be valid unless first authorized by ordinance of the Council. No lease shall be valid for a period of time exceeding fifteen years.

Section 220: Eminent Domain

The Council shall have power to acquire by eminent domain proceedings such property as may be needed for public use.

Section 221: Sale of Real Property

Real property owned by The City of San Diego consisting of eighty (80) contiguous acres or more, whether or not in separate parcels, shall not be sold or exchanged unless such sale or exchange shall have first been authorized by ordinance of the Council and thereafter ratified by the electors of The City of San Diego. The foregoing shall not apply to the sale or exchange of real property to a governmental agency for bona fide governmental purposes which sale or exchange was duly authorized by ordinance of the Council, nor shall it apply to properties previously authorized for disposition by the electors of The City of San Diego.
Formerly Section 221. CITY OFFICES TO BE KEPT OPEN.
(Repeal voted 09-17-1963; effective 02-11-1964.)
New Section 221. SALE OF REAL PROPERTY.
(Addition voted 11-06-1990; effective 02-19-1991.)
Prior Language

Section 222: Effect of Invalidity in Part

If any clause, sentence, paragraph, section or part of this Charter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 223: Amendment of Charter

This Charter may be amended in accordance with the provisions of Section Eight, Article Eleven, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution.

Section 224: Gender

Wherever in this Charter the masculine gender is used, the same shall be deemed amended to include the feminine gender.
Section 224. Repeal of Inconsistent Acts
(Repeal voted 11-3-1964; effective 1-21-1965.)
Section 224. Gender
(Addition voted 11-6-1973; effective 12-7-1973.)
Prior Language

Section 225: Mandatory Disclosure of Business Interests

Every person or entity contracting with the City shall first disclose to the City the names and identities of all natural persons who will receive more than 10% of the contracted amount or who own more than 10% of the entity contracting with the City, where the City will be expending or receiving more than the amounts established by ordinance of the City Council or where the City Council approval is required by this Charter or by ordinance. Contracts subject to this Section include, but are not limited to, contracts awarded pursuant to Section 94 of this Charter, transfers of interests in the City's real or personal property, and grants or renewals of franchises pursuant to Sections 103 or 103.1 of this Charter. The same disclosure shall be made to the City by every person or entity later receiving or assuming any rights or obligations under such contracts where City approval is required to transfer such rights or obligations.

The City may reject a proposed contract, terminate a current contract, or rescind a prior contract, if any person or entity submits false information or omits information required to be disclosed by this Section.

The City shall provide the City Council with the disclosures received from every person or entity contracting with the City where City Council approval is required, prior to the City Council meeting where the contract will be considered. If the person or entity the City will be contracting with has not been determined by the date of the City Council meeting, the City shall provide the City Council with the disclosures at least fifteen days prior to awarding the contract.

This Section does not apply to public agencies, or to entities that are publicly traded companies listed on a stock exchange in the United States.

This Section shall not preclude the City from requiring disclosure of any other information from persons or entities contracting with the City.
(Addition voted 06-02-1992; effective 07-13-1992.)
(Amendment voted 11-06-2018; effective 12-24-2018)
Prior Language

Section 226: Super Majority Vote Requirements

(a) Notwithstanding any other provisions of this Charter, any amendment to this Charter, ballot proposal, initiative, statute, law or regulation of any type, whether proposed to be adopted by the electorate, the City Council, or any other body acting pursuant to this Charter or the Municipal Code, that requires a vote of the electorate in excess of a simple majority for any matter, must itself be approved by a vote of the electorate in the same proportion as proposed, in order to be adopted, valid or otherwise effective.

(b) This section may be adopted by a simple majority vote, and shall be applicable to any amendment of this Charter, ballot proposal, initiative, statute, law or regulation of any type, as set forth in Subsection (a), proposed to be adopted at the municipal election by which this Charter Section 226 is approved by the electorate, or otherwise adopted on or after the date of that municipal election, and shall not be applicable to any matter adopted or approved prior to the date of such municipal election.
(Addition voted 03-05-2002; effective 04-24-2002.)

(Section 226 was ordered reformed by the court November 2004, to read as follows:

(a) Notwithstanding any other provision of this Charter, any ballot proposal, initiative, statute, law or regulation of any type, except amendments of this Charter whether proposed to be adopted by the electorate, the City Council, or any other body acting pursuant to this Charter or the Municipal Code, that requires a vote of the electorate in excess of a simple majority for any matter, must itself be approved by a vote of the electorate in the same proportion as proposed, in order to be adopted, valid or otherwise effective.

(b) This section may be adopted by a simple majority vote.

See, Howard Jarvis Taxpayers Assn. v. City of San Diego, 120 Cal. App. 4th 374 (2004).)

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 5

Office of
The City Attorney
City of San Diego

MEMORANDUM

ADDENDUM D
DRAFT LETTER TO COUNCILMEMBERS SENT UPON RECEIPT OF A REQUEST FOR WAIVER

DATE: [DATE]

TO: Honorable Councilmembers

FROM: City Attorney

SUBJECT: Request to Waive Attorney Conflict of Interest

The enclosed from [SENDER], dated [DATE], requests the City waive an attorney conflict of interest pursuant to California Code of Professional Conduct, Rule 3-310 and states the basis for the waiver request. The City Attorney's Office has determined that the City Council is the appropriate client to provide the waiver on this matter.

As provided in Council Policy No. 000-34, please notify the City Attorney's Office within 10 days of the date of this memo if you request to hear this matter at a City Council meeting. Unless four Councilmembers request that this matter be heard at City Council, this waiver request will be provided to the Mayor to consider in consultation with the City Attorney's Office as provided in Council Policy No. 000-34.

CCM:jvg
Doc. No.: 156404_2
Enclosure
cc:

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 6

CITY COUNCIL OF THE CITY OF SAN DIEGO

SPECIAL REPORT FOR CLOSED SESSION AND OPEN SESSION WAIVER OF ATTORNEY CLIENT PRIVILEGE

JUNE 9, 2006

CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101

CLOSED SESSION WAIVERS:

1. March 30, 1999

   CS Item: San Diego Padres- East Village SD/Qualcomm Stadium

   Motion: Release minutes to Grand Jury
   Vote: 9/0 [Passed]

2. July 25, 2000

   CS Item: Number of Cases: One (Councilmember Stallings'- Moores' stock transaction)

   Motion: Waive attorney client privilege as it related to Federal Grand Jury for interviews pertaining to closed session notes and conversations and Counsel's 1090 analysis
   Vote: 7/0 [Passed]

3. August 5, 2003

   CS Item: Anticipated Litigation: Motion to Quash- Isabel

   Motion: **NOT** waive privilege
   Moved: Councilmember Frye – Dist. 6
   Seconded: Councilmember Madaffer – Dist. 7
   Vote: 5/0 [Passed]

4. September 2, 2003

   CS Item: Barnes-Wallace, et al. v. City of San Diego

   Motion: To waive privilege and disclose vote to not file or join in appeal
   Moved: Councilmember Inzunza- Dist. 8
   Seconded: Councilmember Atkins – Dist 3
   Vote: 9/0 [Passed]

5. March 9, 2004

CS Item: SEC and U.S. Attorney Investigation

Motion: To waive attorney client privilege in responding to the SEC's request for documents
Moved: Councilmember Peters - Dist. 1
Vote: 6/0 [Passed]

6. May 24, 2004

CS Item: Securities and Exchange Commission [SEC] City of San Diego Bond Offerings

Motion: To waive all client privilege related to Vinson & Elkins Report
Vote: 7/0 [Passed]

7. July 12, 2004

CS Item: Anticipated Litigation/Significant Exposure: City of San Diego Bond Offerings

Motion: To waive attorney client privilege for Gleason settlement
Moved: Councilmember Maienschein – Dist. 5
Seconded: Councilmember Madaffer – Dist. 7
Vote: 7/0 [Passed]

8. June 27, 2005

CS Item: Anticipated Litigation/Initiation

Motion: To retain Heller Ehrman, full report on receivership at next closed session if no waiver on July 5, 2005
Moved: Councilmember Peters – Dist. 1
Seconded: Councilmember Atkins- Dist. 3
Vote: 6/0 [Passed]

9. September 13, 2005

CS Item 6: In re: United States Securities and Exchange Commission Investigation and United States Attorney Investigation into City's Finances

Motion: To waive attorney client privilege for June 30 subpoena except documents which release would compromise ongoing litigation negotiations
Moved: Councilmember Peters- Dist. 1
Seconded: Councilmember Frye – Dist. 6
Vote: 6/0 [Passed]

Reported out in Open Session on September 13, 2005:

The City Council waived the protections of the attorney client privilege and the work product doctrine with respect to all documents responsive to the subpoena issued by the SEC on June 30, 2005, except those documents created for litigation commenced on or after February 12, 2004, and that the provision of any such materials to the SEC shall be subject to the existing confidentially agreement between the City and the SEC.

The City Council voted that the protections of the attorney client privilege and the attorney work product doctrine be waived with respect to all documents responsive to the most recent subpoenas issued by the U.S. Attorney or U.S. Grand Jury, dated December 22, 2004, January 11, 2005, February 9, 2005, February 11, 2005, February 25, 2005, March 8, 2005, May 10, 2005, May 18, 2005, June 9, 2005, July 26, 2005, August 8, 2005, and August 16, 2005, to the extent those subpoenas request documents not previously requested by prior subpoenas issued by the same entity and except for those documents created for litigation commenced on or after February 12, 2004.

10. May 2, 2006

CS Item 3: SDCERS v. San Diego City Attorney Michael J. Aguirre, et al.

Motion:	To waive attorney client privilege and authorize and direct the City Attorney to release transcripts from the closed sessions of July 25 and August 2, 2005, only as to those portions of the transcripts related to this case (not unrelated closed session agenda items) to the court only for in camera review
Moved:	Councilmember Peters – Dist. 1
Seconded:	Councilmember Madaffer- Dist 7
Vote:	6/1 [Passed]

Reported out in Open Session on May 2, 2006, by Karen Heumann:

The City Council met today, May 2, 2006, in Closed Session, over the objections of the City Attorney regarding Closed Session Item 3 - SDCERS v. San Diego City Attorney Michael J. Aguirre. I was present throughout the item discussion only for purposes of keeping a written record of attendees, motions, and votes taken.

The City Council voted to waive attorney-client privilege and authorize and direct the City Attorney to release transcripts from the closed sessions of July 25 and August 2, 2005, only as to those portions of the transcripts related to this case (not unrelated closed session agenda items), to the court only for in camera review.

The City Council discussed this item over objections of City Attorney Michael Aguirre.

City Attorney Michael Aguirre was not present for the discussion.

Executive City Attorney Don McGrath left when Counsel President Peters would not recuse and leave. I stayed only to keep record.

Council President Peters did not recuse and leave to allow City Attorney discussion. Council President Peters has a conflict of interest in this case.

This action taken today was not noticed. It was only noticed as an update on the status of the matter. City Attorney of the opinion this was a Brown Act violation.

(Note: Item redocketed for consideration due to the Brown Act violation)

11. May 23, 2006

CS Item 2: SDCERS v. San Diego City Attorney, et al.

Motion:	To continue consideration of waiver until after summary judgment arguments June 26 with report on progress, no waiver of attorney client privilege
Moved:	Councilmember Faulconer- Dist. 2
Seconded:	Councilmember Frye – Dist. 6
Vote:	7/1 (Councilmember Madaffer (Dist. 7) – Nay) [Passed]

OPEN SESSION WAIVERS:

1. January 31, 2005:

Item S404: In the matter of waiving the attorney-client privilege with respect to communications between the City Attorney's Office, outside legal counsel, and officers and employees of the City regarding document production in response to production requests and subpoenas received from the Securities and Exchange Commission and the U.S. Attorney's Office.

Motion:	To waive privilege
Moved:	Councilmember Frye – Dist. 6
Seconded:	Councilmember Zucchet – Dist. 2
Vote:	9/0 [Passed]

2. May 10, 2005:

Item S503: Requesting the Board of Administration of the San Diego City Employees Retirement System (SDCERS) to comply with the Disclosure Requests Made by the U.S. Securities Exchange Commission (SEC) and the U.S. Attorney's Office.

Motion: Adopt with direction to City Manager to send request to the Board to docket the issue for reconsideration to waive privilege
Moved: Councilmember Peters – Dist. 1
Seconded: Councilmember Atkins Dist. 3
Vote: 9/0 [Passed]

3. May 24, 2005

Item S507: Waiver of Attorney-Client Privilege and Work-Product Doctrine with Respect to a Report from Luce, Forward, Hamilton & Scripps Concerning Pension Benefits.

Moved: Councilmember Madaffer - Dist. 7
Seconded: Councilmember Frye - Dist. 6
Vote: 8/0 [Passed]

4. August 1, 2005

Item S408: Waiver of Attorney-Client Protections with Respect to Vinson & Elkins Documents.

Moved: Councilmember Peters – Dist. 1
Seconded: Councilmember Madaffer – Dist. 7
Vote: 6/0 [Passed]

5. August 2, 2005

Item S401: Waiver of Attorney-Client Privilege and the Work Product Doctrine.

Moved: Councilmember Peters – Dist. 1
Seconded: Councilmember Madaffer – Dist. 7
Vote: 6/0 [Passed]

REPORTED BY:_____
Karen Heumann
Assistant City Attorney

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 7

MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney
DAVID J. KARLIN, Senior Chief Deputy City Attorney
California State Bar No. 156178
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant/Respondent

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

SAN DIEGANS FOR OPEN GOVERNMENT, Plaintiff/Petitioner, v. CITY OF SAN DIEGO; and DOES 1 through 100, Defendant/Respondent.	Case No. 37-2017-00023649-CU-MC-CTL **CITY OF SAN DIEGO'S OPPOSITION TO PETITION FOR WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT** I/C Judge: Hon. John S. Meyer Date: June 1, 2018 Time: 2 p.m. Dept.: 64

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Defendant and Respondent City of San Diego ("City") submits the following Memorandum of Points and Authorities in opposition to Plaintiff and Petitioner San Diegans for Open Government's ("SDOG") Opening Merits Brief:

I. INTRODUCTION

On January 19, 2018, this Court properly identified the issues presented in this case as being whether a June 15, 2017, confidential memorandum is an attorney-client privileged document and, if so, whether the privilege has been waived. *See* Register of Action No. 43. Surprisingly, SDOG's opening brief fails to adequately address either of these issues, and instead pivots towards a novel and unsupported proposition that the attorney-client privilege never attached to the memorandum. It is not surprising why SDOG pivoted in this fashion as the facts and legal authority clearly favors the City on the identified issues. SDOG, however, enjoys no greater success with its new approach. SDOG's proposition is based on a faulty factual premise, and the scant and unpersuasive legal authority cited fails to address any of the issues presented in this matter. As will be shown below, the June 15, 2017, confidential memorandum remains subject to the attorney-client privilege and that privilege has not been waived.

II. STATEMENT OF FACTS

On May 23, 2017, the City Attorney's Office released a public Report to the Mayor and Councilmembers titled "Proposed Initiative for San Diego River Park and Soccer City" ("May 23, 2017 City Attorney Public Report"). Elliott Decl. ¶ 8; FitzGerald Decl. ¶¶ 7-8 and Ex. "A." The so-called "Soccer City Initiative" proposes the development and use of approximately 233 acres of City-owned real property at and near the SDCCU (formerly Qualcomm) Stadium and 20 acres of City-owned real property and improvements on Murphy Canyon Road, which was previously the San Diego Chargers' practice facility. Elliott Decl. ¶ 4; FitzGerald Decl. ¶ 7.

At the time the May 23, 2017 City Attorney Public Report was released, the San Diego County Registrar of Voters and the City Clerk had certified that the Soccer City Initiative had sufficient signatures to qualify for a ballot. Elliott Decl. ¶ 7; FitzGerald Decl. ¶ 9. Therefore, the Council was preparing to hold an open session hearing on June 19, 2017, to determine whether to adopt the Soccer City Initiative outright as written, or reject it and submit it to City voters, as

required by San Diego Municipal Code sections 27.1034 and 27.1035. Elliott Decl. ¶ 10; FitzGerald Decl. ¶ 9.

The purpose of the May 23, 2017 City Attorney Public Report was to provide an overview of the complex and lengthy Soccer City Initiative for the benefit of both the City and the public, and answer specific factual questions received from the Mayor and Councilmembers. Elliott Decl. ¶¶ 8-9; FitzGerald Decl. ¶¶ 4 & 10. If passed, the Soccer City Initiative would govern the future of a major City asset, and appeared to be of great interest to the public. FitzGerald Decl. ¶ 10.

The May 23, 2017 City Attorney Public Report was not intended to provide confidential legal advice, or to support or oppose the Soccer City Initiative. Elliott Decl. ¶ 9; FitzGerald Decl. ¶ 11. Such reports are intended to provide the decision-makers and the public with important information for their consideration before the hearing in which the item will be discussed. Elliott Decl. ¶ 9. Their primary purpose is educational and explanatory. FitzGerald Decl. ¶ 4. The May 23, 2017 City Attorney Public Report was written to be a completely neutral and objective summary. FitzGerald Decl. ¶ 11. The report, like all other similar reports, was posted on the Internet and was not intended to provide confidential legal advice or to be a confidential communication between a client and an attorney. Elliott Decl. ¶ 9; FitzGerald Decl. ¶¶ 4 & 11.

On June 15, 2017, the City Attorney's Office hand-delivered in sealed envelopes marked "CONFIDENTIAL," a memorandum titled "Proposed Initiative for the San Diego River Park and Soccer City" ("June 15, 2017 Confidential Memo") to the Mayor, Councilmembers, and the Independent Budget Analyst, among others. Elliott Decl. ¶ 11; FitzGerald Decl. ¶ 19. The memorandum was clearly labeled "ATTORNEY TO CLIENT CORRESPONDENCE – FOR CONFIDENTIAL USE ONLY," and the introductory paragraph of this memorandum reiterated that the memorandum was issued confidentially due to the sensitivity of the information contained therein. Elliott Decl. ¶ 11; FitzGerald Decl. ¶¶ 16-17.

The June 15, 2017 Confidential Memo specifically addressed certain legal questions from City officials that called for a confidential response. Elliott Decl. ¶¶ 12-13; FitzGerald Decl. ¶¶ 14-15. The memorandum contained the City Attorney Office's confidential legal analysis,

conclusions, and advice to its client on numerous legal issues regarding the Soccer City Initiative. It was determined that releasing the information in the June 15, 2017 Confidential Memo to the public could compromise the City's legal position in potential future negotiations and litigation that may occur if the Soccer City Initiative was approved by the voters. Elliott Decl. ¶ 13; FitzGerald Decl. ¶ 14.

On June 26, 2017, SDOG's counsel made a California Public Records Act ("CPRA") request for a copy of the June 15, 2017 Confidential Memo. Briggs' Decl. ¶ 5 and Ex. "D." The City subsequently informed him that the records were being "withheld pursuant to Government Code section 6254(k) (Attorney-Client Privilege)." *Id.*

Two days later, it was discovered that Christopher Garrett of Latham & Watkins, FS Investors' attorney, was in the possession of a copy of the June 15, 2017 Confidential Memo. Elliott Decl. ¶¶ 15-19; Braun Decl. ¶ 3. According to Mr. Garrett, Nick Stone of FS Investors provided the copy of the memorandum to him, and that he did not know who had provided the memorandum to Mr. Stone. Elliott Decl. ¶ 19.

Despite later statements to the contrary, Mr. Garrett acknowledged in an email sent to the City Attorney's Office in the afternoon of June 28, 2017, that the June 15, 2017 Confidential Memo "may have been intended to be a confidential document and might be subject to the attorney client or other applicable privileges. The copy that I received may have been mistakenly provided to us." Elliott Decl. ¶ 18 and Ex. "A." Mr. Garrett stated that if this were true, he and his office would destroy any electronic or papers copies of the June 15, 2017 Confidential Memo in their possession, and he would ask his client to do the same. *Id.* It was later learned that Mr. Garrett had provided a copy of the June 15, 2017 Confidential Memo to Roger Showley, a staff writer for the San Diego Union-Tribune. Elliott Decl. ¶ 20.

As soon as the City Attorney and her office learned of the unlawful disclosure of the June 15, 2017 Confidential Memo, immediate action was taken to prevent further dissemination of the privileged materials. Mr. Showley was asked not to report on the contents of the memorandum or to publish it online as this would harm the City. Braun Decl. ¶ 6. Despite these protests, Mr. Showley published the memorandum on the Union-Tribune's website. Elliott Decl. ¶ 22. The

City Attorney and her chief of staff then spoke directly with Union-Tribune editor Jeff Light, again to implore the Union-Tribune to remove the June 15, 2017 Confidential Memo from its website. The City Attorney explained that the Confidential Memo contained legal advice, including negotiation strategy, whose dissemination harmed the City and its citizens. Braun Decl. ¶ 8. Mr. Light subsequently declined to take the memorandum down from the website. Elliott Decl. ¶ 24.

The City Attorney's Office contacted the Director of Legislative Affairs for the Office of Council President Myrtle Cole to determine if a special meeting of the City Council could be held prior to the 4th of July holiday to discuss waiving the attorney-client privilege to the June 15, 2017 Confidential Memo. Elliott Decl. ¶¶ 25-26; Demorest Decl. ¶ 3. That effort proved ineffective as there were not enough Councilmembers available to form a quorum for a special meeting. Elliott Decl. ¶ 26; Demorest Decl. ¶¶ 4-5.

The City Attorney's Office researched whether to bring legal action to enjoin the Union-Tribune from continuing to publish the June 15, 2017 Confidential Memo. Elliott Decl. ¶ 27. Ultimately, it was decided legal action against the newspaper would prove futile based on United States Supreme Court precedent involving the media. *Id.*

On October 3, 2017, Councilmember Chris Cate came forward and publicly acknowledged that he leaked the June 15, 2017 Confidential Memo by emailing a copy to Craig Benedetto, a principal of California Strategies, LLC, a consulting firm retained by FS Investors, on June 16, 2017. Elliott Decl. ¶ 29. In doing so, Councilmember Cate violated the City's Ethics Ordinance which prohibits City Officials from disclosing confidential information acquired in the course of their official duties. San Diego Municipal Code § 27.3564(e). Councilmember Cate subsequently agreed to pay a maximum $5,000 fine levied by the San Diego Ethics Commission for improperly disclosing the June 15, 2017 Confidential Memo. Elliott Decl. ¶ 31 and Ex. "C."

III. ARGUMENT

A. THE JUNE 15, 2017 CONFIDENTIAL MEMO IS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND EXEMPT FROM DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT

"The attorney-client privilege, set forth at Evidence Code section 954, confers a privilege

on the client 'to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer. . . .'" *Costco Wholesale Corp. v. Super. Ct.*, 47 Cal. 4th 725, 732 (2009) ("*Costco*"). The privilege applies to confidential communications made in the scope of an attorney-client relationship, both to communications made in anticipation of litigation and to legal advice when no litigation is threated. *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 371 (1993). The privilege also applies "irrespective of whether [the communication] includes unprivileged material." *Costco*, 47 Cal. 4th at 734.

A "confidential communication" is defined to mean "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation," and "includes a legal opinion formed and the advice given by the lawyer in the course of that relationship." Cal. Evid. Code § 952; *see also Costco*, 47 Cal. 4th at 733. A "client" is "a person who, directly or through an authorized representative, consults a lawyer for the purpose of . . . securing legal service or advice [from the lawyer in the lawyer's] professional capacity." Cal. Evid. Code § 951. "Clients" include public entities, who may assert the attorney-client privilege. *Roberts*, 5 Cal. 4th at 370.

The attorney-privilege can be traced back almost 400 years. *Costco*, 47 Cal. 4th at 732; *Roberts*, 5 Cal. 4th at 380. It rests on sound public policy to ensure "the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice." *Roberts*, 5 Cal. 4th at 380 (internal quotations omitted). The *Roberts* court recognized that the privilege was "no mere peripheral evidentiary rule, but is held vital to the effective administration of justice," for it "promotes forthright legal advice and thus screens out meritless litigation that could occupy the courts at the public's expense." *Id.* The privilege also serves to "'encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.'" *Id.* (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)); *see also DP Pham, LLC v. Cheadle*, 246 Cal. App. 4th 653, 663-64 (2016) ("The privilege's 'fundamental purpose "is to safeguard the confidential relationship

between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters . . . ."""").

The attorney-client privilege is an absolute privilege that prevents disclosure without regard to relevance, necessity, or particular circumstances peculiar to a case. *Costco*, 47 Cal. 4th at 732. Because the privilege is a legislative creation, courts have no power to expand or limit it by implied exceptions. *Id.* at 739; *McDermott Will & Emery LLP v. Super. Ct.*, 10 Cal. App. 5th 1083, 1100 (2017) ("*McDermott*"). Equally important, the privilege should not "be whittled away by means of specious argument that it has been waived," and courts should not "seize upon slight and equivocal circumstances as a technical reason for destroying the privilege." *Lohman v. Super. Ct.*, 81 Cal. App. 3d 90, 94 (1978).

i. The June 15, 2017 Confidential Memo is a confidential communication.

Generally, "[t]he party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship." *Costco*, 47 Cal. 4th at 733. "To evaluate whether the party claiming the privilege has made a prima facia showing, the focus in is on the *purpose of the relationship* between the parties to a communication." *League of Cal. Cities v. Super. Ct.*, 241 Cal. App. 4th 976, 989 (2015). If "the dominant purpose of the relationship between the parties to the communication was one of attorney-client, the communication is protected by the privilege." *Id.* The burden then shifts to the opponent of the claim of privilege to establish that the privilege does not apply. *Costco*, 47 Cal. 4th at 733; *League of Cal. Cities*, 241 Cal. App. 4th at 989.

Here, it is the City's burden to establish prima facially that the June 2017 Confidential Memo is a communication made in the course of an attorney-client relationship despite SDOG's citation to Evidence Code section 917(a). *See* SDOG's Opening Br. p. 6:8-9. Apparently, SDOG has misread Section 917 as creating a presumption that the memorandum was made in the course of an attorney-client relationship ***as well as*** that the memorandum was confidential. *See Travelers Ins. Companies v. Super. Ct.*, 143 Cal. App. 3d 436, 447-48 (1983). Although Section

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917(a) creates a presumption as to confidentiality, it remains the City's burden to show the existence of an attorney-client relationship towards the communication in question. *Id.* at 448. This is a burden the City can easily satisfy.

As stated above, the June 15, 2017 Confidential Memo was prepared by the City Attorney's Office to specifically address certain legal questions raised by various City officials. FitzGerald Decl. ¶ 14. The City Attorney is the chief legal advisor of, and attorney for the City and all its departments. San Diego Charter § 40; Elliott Decl. ¶ 3. The City Attorney and her deputies are to perform all the services incidental to a legal department, and the City is their sole client. *Id.*; FitzGerald Decl. ¶ 2. The June 15, 2017 Confidential Memo was transmitted to the City's elected officials in confidence, and in furtherance of the City's interests. FitzGerald Decl. ¶¶ 5, 14, 19-20. The memorandum contained confidential legal advice and attorney work product, and was made exclusively in the course of an attorney-client relationship. Elliott Decl. ¶¶ 12-13; FitzGerald Decl. ¶¶ 3 & 15. There can be no reasonable dispute that all the elements of Evidence Code section 952 are clearly established, and the June 15, 2017 Confidential Memo is a confidential communication subject to the attorney-client privilege.[1] *See Costco*, 47 Cal. 4th at 733.

ii. *Roberts v. City of Palmdale*, 5 Cal. 4th 363 (1993)

If there is any doubt whether the June 15, 2017 Confidential Memo is subject to the attorney-client privilege and exempt from disclosure under the CPRA, this Court need look no further than to the California Supreme Court's decision in *Roberts*, 5 Cal. 4th 363. In *Roberts*, the Palmdale city attorney prepared a confidential written response to a resident's eight-page letter challenging the approval of a parcel map. *Id.* at 367-68. After a hearing where the city attorney's response was referred to, the resident brought a petition challenging, among other things, the city's refusal to provide her with a copy of the confidential written response. One of the questions on review was whether the CPRA required "public disclosure of a letter from the

[1] If the Court remains unsatisfied that the elements of Evidence Code sections 952 and 954 have been satisfied, the City requests an in camera examination of the June 15, 2017 Confidential Memo. *League of Cal. Cities*, 241 Cal. App. 4th at 989-90.

city attorney distributed to members of the city council, expressing the legal opinion of the city attorney regarding a matter pending before the council?" *Id.* at 367.

In addressing this question, the California Supreme Court first examined whether the city council may properly assert the attorney-client privilege to the city attorney's confidential written response under the CPRA even though the response did not relate to pending litigation. *Roberts*, 5 Cal. 4th at 369-70. While it was undisputed that the response fell within the CPRA's definition of "public record," the Court also held the response fell within Government Code section 6254(k)'s statutory exemption. *Id.* at 370-71. Section 6254 exempts certain public records from disclosure, including "[r]ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code § 6254(k). By referencing the Evidence Code, the Court held that the CPRA incorporated the attorney-client privilege and made it applicable to public records. *Id.* at 370. The Court further held that "a local governing body is the holder of the attorney-client privilege with respect to written legal opinions by the governing body's attorney, and may assert the privilege under the Public Records Act without alleging that the writing is relevant to pending litigation under section 6254, subdivision (b)." *Id.* at 373. Thus, the city was not required to produce the city attorney's written response under the CPRA.

The same result as in *Roberts* is mandated here. The City may reasonably rely on Government Code section 6254(k) in declining to produce the June 15, 2017 Confidential Memo to SDOG's counsel in response to his CPRA request because it is subject to the attorney-client privilege.

B. COUNCILMEMBER CATE'S UNLAWFUL DISCLOSURE OF THE JUNE 15 CONFIDENTIAL MEMO DID NOT WAIVE THE ATTORNEY-CLIENT PRIVILEGE

Pursuant to Evidence Code section 912, the attorney-client privilege may be waived "with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone." Cal. Evid. Code § 912(a). Consent to disclosure "is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure,

including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege." *Id.*

As recognized by the California Supreme Court, case law has construed Evidence Code section 912 restrictively. *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176, 1186 (2016). The disclosure contemplated by Section 912 has been found to involve "some measure of choice and deliberation on the part of the privilege holder." *Id.* at 1188. For example, "'waiver' does not include the accidental, inadvertent disclosure of privileged information by [an] attorney." *State Comp. Ins. Fund v. WPS, Inc.*, 70 Cal. App. 4th 644, 654 (1999) (embraced by *Rico v. Mitsubishi Motors Corp.*, 42 Cal. 4th 807, 817 (2007)). A subsequent appellate court stated the *State Comp. Ins. Fund* decision resulted in the court reading into Section 912 the requirement that the disclosure be "intentional," which "is consistent with the long-standing principle that a privilege is not waived in the absence of a manifest intent to waive." *Newark Unified Sch. Dist. v. Super. Ct.*, 245 Cal. App. 4th 887, 900 (2015); *see Lohman v. Super. Ct.*, 81 Cal. App. 3d 90, 95 (1978) (waiver of attorney-client privilege occurs "only when the holder of privilege has, in fact, voluntarily disclosed or consented to disclosure made, in fact, by someone else").

i. Councilmember Cate is not the holder of the privilege.

The City is a municipal corporation operating as a Charter city, and has the rights and powers "to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided" by the San Diego Charter. *See* San Diego Charter § 2. Under this form of government, the City Council is the legislative body of the City with each of its nine members having the right to vote upon all questions before it. San Diego Charter §§ 12(a) & 270(a)-(b). "No resolution, ordinance, ***or other action*** shall be passed or become effective without receiving the affirmative vote of five members of the Council, unless a greater number is otherwise required by the Charter." San Diego Charter § 270(c) (emphasis added).

The holder of attorney-client privilege regarding the June 15, 2017 Confidential Memo is the City Council, and the privilege may only be waived if five or more members affirmative vote to do so. *McDermott*, 10 Cal. App. 5th at 1101 (attorney-client privilege may only be waived by the holder of the privilege); *see also Vela v. Super. Ct.*, 208 Cal. App. 3d 141, 150 (1989) (city is

holder of the attorney-client privilege as to statements made for the purpose of protecting the city from future civil litigation and were intended to be confidential). Therefore, Councilmember Cate's unlawful disclosure of the June 15, 207 Confidential Memo could not waive the attorney-client privilege on the City's behalf. *See* Elliott Decl. ¶ 32. A waiver could only occur if five or more Councilmembers voted to do so, and no such vote has taken place.[2] Elliott Decl. ¶ 26; Demorest Decl. ¶ 4.

ii. Sufficient precautions were taken to ensure the privilege was maintained as well as efforts to retrieve the confidential memo.

Other relevant factors to determining whether a privilege has been waived include the precautions taken to ensure the privilege was maintained as well as the promptness with which the privilege holder sought return of the documents. *See Ardon*, 62 Cal. 4th at 1191; *McDermott*, 10 Cal. App. 5th at 1101-02. As discussed below, the City took sufficient precautions to ensure the attorney-client privilege was maintained throughout the distribution process, and immediately sought the return of the June 15, 2017 Confidential Memo upon learning of its unlawful disclosure.

In preparing the June 15, 2017 Confidential Memo, the City Attorney's Office clearly and unequivocally labeled the document "ATTORNEY TO CLIENT CORRESPONDENCE – FOR CONFIDENTIAL USE ONLY," and reiterated this position in the memorandum's introductory paragraph. Elliott Decl. ¶ 11; FitzGerald Decl. ¶¶ 16-19; Al-Hibshi Decl. ¶¶ 3-4. When the printed memoranda were prepared for distribution, they were placed in sealed envelopes marked "CONFIDENTIAL" in red ink. Elliott Decl. ¶ 11; FitzGerald Decl. ¶¶ 19; Al-Hibshi Decl. ¶ 5. These envelopes were then hand-delivered to the offices of each of the intended recipients, and no other copies were distributed to any City employee outside of the City Attorney's Office. Elliott Decl. ¶ 11; FitzGerald Decl. ¶¶ 19; Al-Hibshi Decl. ¶¶ 5-6.

Despite SDOG's assertions to the contrary, the City did undertake efforts to prevent the

[2] Because the Charter mandates that a majority of the Council affirmative vote in favor of an action, the City cannot consent to disclosure through "other conduct" as may occur with other litigants.

Union-Tribune from publishing the June 15, 2017 Confidential Memo as well as asking the newspaper to remove the memorandum from its website once published.[3] The City Attorney and her chief of staff immediately acted upon learning of the breach in confidentiality. They spoke with an attorney who acknowledged receiving the confidential memorandum and represented that he would take the necessary steps to destroy any copies possessed by his law firm and client. Elliott Decl. ¶¶ 18-19. Unbeknownst to anyone in City Attorney's Office, the attorney gave the memorandum to a reporter at the Union-Tribune. Elliott Decl. ¶¶ 20-21; Braun Decl. ¶ 6. Once this fact was known, the City Attorney contacted both the reporter and the Union-Tribune editor demanding that the memorandum not be published. Elliott Decl. ¶¶ 22-24; Braun Decl. ¶¶ 5-6, 8.

After the Union-Tribune refused to remove the June 15, 2017 Confidential Memo from its website, the City Attorney's Office explored whether the City could initiate legal action against the newspaper. Elliott Decl. ¶ 27. Legal research showed the futility in any such effort as the media enjoys an absolute right to publish information of great public concern even if the information was stolen by a third party. *See New York Times v. United States*, 403 U.S. 713, 714 (1971) (*per curiam*) (upholding the right of the press to publish information of great public concern obtained from documents stolen by a third party); *Bartnicki v. Vopper*, 532 U.S. 514, 527-28 (2001) (state may not constitutionally punish newspaper for publication of lawfully obtained information concerning a matter of public significance).

In this situation, there can be no finding of an implied waiver. *See McDermott*, 10 Cal. App. 5th at 1102-03 (trial court did not err in finding that the attorney-client privilege was not waived when the holder did not request a return of the privileged email). The City Attorney's

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[3] SDOG's citation to the State Bar of California's Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 2015-193, is of limited relevance to the issues presented and the Court should give very little, if any, weight to it. The opinion addresses an attorney's ethical duties in handling discovery of electronically stored information ("ESI"), not any of the issues in this matter. The opinion cites *Kilopass Tech. Inc. v. Sidense Corp.*, No. C10-02066SI, 2012 WL 1534065 at *2-3 (N.D. Cal., 2012), for the proposition that a lack of reasonable care to protect against disclosing privileged and protected information when producing ESI can be deemed a waiver of the attorney-client privilege. As discussed above, the City Attorney's Office took adequate protections to ensure the confidentiality of the June 15, 2017 Confidential Memo, and it was only disclosed through the unlawful acts of an individual Councilmember.

Office acted reasonably in safeguarding the confidentiality of the memorandum and took appropriate action in seeking its return.

iii. A finding that the City waived the attorney-client privilege would be against sound public policy.

As stated above, the attorney-client privilege is founded on sound public policy which benefits both public entities as well as private citizens. In *Roberts*, the California Supreme Court recognized that

> [a] city council needs freedom to confer with its lawyers confidentially in order to obtain adequate advice, just as does a private citizen who seeks legal counsel, even though the scope of confidential meetings is limited by this state's public meeting requirements. [Citations.] The public interest is served by the privilege because it permits local government agencies to seek advice that may prevent the agency from becoming embroiled in litigation, and it may permit the agency to avoid unnecessary controversy with various members of the public.

Roberts, 5 Cal. 4th at 380-81.

A finding of an actual or implied waiver of the attorney-client privilege would run counter to this sound public policy, and thwart the role of the City Attorney. It would mean that a dissatisfied Councilmember could disclose confidential legal advice with impunity merely to satisfy his own curiosity, or because the advice doesn't strike him as new, or novel, or interesting. Furthermore, without the protections offered by the attorney-client privilege, individuals could indiscriminately share confidential information to the City's detriment. For example, they could share the City's labor negotiation strategy with labor unions. They could share the City's legal defenses with the lawyer who sues it. They could tell landowners how much the City is willing to pay for their property. The absence of the attorney-client privilege would also chill the ability of the City Attorney to render legal advice to the City, and impact the Council's ability to freely engage in discussions, settle lawsuits, negotiate contracts, purchase property and sell assets. Elliott Decl. ¶ 34. In such an environment, no secret would be safe.

C. SDOG'S SPECIOUS ARGUMENTS ARE NOT WELL-FOUNDED

For the first time, SDOG now argues that the attorney-client privilege never attached to the June 15, 2017 Confidential Memo because it is "nothing more than a follow-up communication concerning the contents of the [May 23, 2017 City Attorney Public Report on the

Soccer City Initiative] that was widely disseminated to the public and that remains available to the public today." SDOG's Opening Br. at p. 7:17-19. According to SDOG, the Mayor and City Council's public disclosure of the May 23, 2017 City Attorney Public Report resulted in a waiver of any privilege under Government Code section 912(a), and that this waiver also covered the June 15, 2017 Confidential Memo because it dealt same subject matter and was only a "follow-up" document.

It bears repeating that courts have been cautioned that the attorney-client privilege should not be "whittled away by . . . [a] specious argument," nor destroyed by "slight and equivocal circumstances." *Lohman*, 81 Cal. App. 3d at 94. SDOG's newly articulated proposition fits into that precaution perfectly, and the Court should reject it out of hand.[4]

i. The May 23, 2017 City Attorney Public Report was never intended to be confidential and the City never waived any privilege associated with it.

First and foremost, SDOG erroneously identifies the May 23, 2017 City Attorney Public Report as a legal memorandum, and ignores significant differences between the two types of documents. Elliott Decl. ¶ 9. City Attorney Reports are public documents issued by the City Attorney's Office in response to a request from City officials for a report on the status of the law in any given area, or prepared upon the initiative of the City Attorney or staff when a matter of importance comes before the Council or Council Committee. FitzGerald Decl. ¶ 4. Their primary purpose is educational and explanatory, and they are not intended to provide confidential legal advice or as confidential communications between a client and an attorney. *Id.* These reports are published both by the City Attorney and the City Clerk on the City's website. *Id.*; Elliott Decl. ¶

[4] Additionally, SDOG's argument logically leads to several absurd results. First, if SDOG's proposition is accepted, it means that anytime the Mayor or City Council request the City Attorney to comment on a matter in open session or in a public writing, that all follow-up communications on the same subject matter will not be subject to the attorney-client privilege. In such an environment, the City Attorney (or any attorney, for that matter) would be unable to perform her function in rendering legal advice. *See* Elliott Decl. ¶ 34. Also, SDOG leans heavily on the fact that, if the Court were to uphold the attorney-client privilege, lawyers would not be able to ethically review the June 15, 2017 Confidential Memo. SDOG ignores the fact that, but for the unlawful disclosure, these lawyers (as well as everyone else) would not have been able to review the memorandum at all. Therefore, if the privilege is upheld, these lawyers are in no worse position than they were in originally had the memorandum not been disclosed.

9. Legal memoranda, on the other hand, may or may not be made available to the public, depending on the sensitivity of the advice provided. Elliott Decl. ¶ 9. Confidential City Attorney memoranda to City officials are prepared at the discretion of the City Attorney, either in response to a legal question from a client or upon the initiative of the City Attorney or staff when the City Attorney's Office determines that a confidential memorandum is appropriate to fully inform its client about legal issues that could jeopardize the City's interests. FitzGerald Decl. ¶ 5. The primary purpose of a confidential memorandum is to legally protect the City Attorney Office's advice, analysis, and conclusions when including that information in a public memorandum would be detrimental to the City. *Id.*

The attorney-client privilege under Evidence Code section 954 never attached to the May 23, 2017 City Attorney Public Report because this report was not intended to be a confidential communication. *See* Cal. Evid. Code §§ 952 & 954. It follows, then, that there could be no "waiver" of the attorney-client privilege because it never attached, and there could not be a subsequent "follow-up" waiver regarding the June 15, 2017 Confidential Memo, as alleged by SDOG.

ii. SDOG's cited case authority is inapplicable to the issues presented.

SDOG only cites three cases to support its novel proposition that the June 15, 2017 Confidential Memo is not subject to the attorney-client privilege – one California appellate decision and two federal district court orders addressing discovery issues. In addition to the scarcity of persuasive cases, the cases which SDOG does cite suffer from several important distinctions making them inapplicable to the issues presented here.

The one California case, *Jones v. Super. Ct.*, 119 Cal. App. 3d 534 (1981), dealt with waiver of the physician-patient privilege and not the attorney-client privilege.[5] In *Jones*, the appellate court held plaintiff's mother, by testifying freely as to the circumstances of her use of a prenatal drug, had waived the privilege because she had disclosed a "significant part" of her communications with physicians on that subject. *Jones*, 119 Cal. App. 3d at 546. The court's

[5] Unlike the attorney-client privilege, the physician-patient privilege is not absolute. *Jones*, 119 Cal. App. 3d at 550.

analysis focused on the fact "that the scope of the waiver should be determined primarily by reference to the purpose of the privilege . . . ." *Id.* at 547. The court opined that because the purpose of the physician-patient privilege was to preclude humiliation, "[w]here the disclosure sought is so related to the disclosure already made that the patient could not reasonably retain a privacy interest in preventing it, then the purpose of the privilege no longer exists, and it may be said that the privilege has been waived." *Id.* at 547-48. In other words, because the mother had already willingly testified on the subject matter she could suffer no further humiliation if compelled to provide additional testify on the subject.

Equally important to the court was that "[a] patient ought not be permitted to claim the privilege merely in order to aid one of the parties to the litigation, where no legitimate claim to confidentiality exists." *Jones*, 119 Cal. App. 3d at 548. This same sentiment was echoed in the federal cases. *See Telecast Inc. v. Gemstar Devel. Corp.*, 158 F.R.D. 650, 653 (N.D. Cal., Dec. 12, 1994) ("A party cannot disclose only those facts beneficial to its case and refuse to disclose, on the grounds of privilege, related facts adverse to its position"); *accord, Sony Computer Entm't America, Inc. v. Great American Ins. Co.*, 229 F.R.D. 632, 635 (N.D. Cal., Aug. 9, 2005).

Here, none of these factors are applicable to the present case. The City has not placed the contents of the June 15, 2017 Confidential Memo at issue in any litigation. On the contrary, the City has maintained that the memorandum is confidential and privileged, and continues to do so.

IV. CONCLUSION

Based on the foregoing, the City respectfully requests that SDOG's Petition for Writ of Mandate under the California Public Records Act. The June 15, 2017 Confidential Memo is a document protected by the attorney-client privilege, and remains so to this date.

Dated: May 18, 2018

MARA W. ELLIOTT, City Attorney

By _____
David J. Karlin
Senior Chief Deputy City Attorney

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 8

Senate Bill No. 1732

CHAPTER 63

An act to amend Section 54952.2 of, and to add Section 6252.7 to, the Government Code, relating to local agencies.

[Approved by Governor July 03, 2008. Filed with Secretary of State July 03, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1732, Romero. Local agencies.

(1) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference. An appellate court in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

This bill would instead prohibit a majority of members of a legislative body of a local agency from using, outside a meeting authorized by the act, a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. It also would state the Legislature’s declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding. It would also provide that the changes made by this bill shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications, outside of a meeting authorized by the Ralph M. Brown Act, with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the body.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby declares that it disapproves the court's holding in Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533, 545, fn. 6, to the extent that it construes the prohibition against serial meetings by a legislative body of a local agency, as contained in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, to require that a series of individual meetings by members of a body actually result in a collective concurrence to violate the prohibition rather than also including the process of developing a collective concurrence as a violation of the prohibition.

(b) It is the intent of the Legislature that the changes made by Section 3 of this act supersede the court's holding described in subdivision (a).

SEC. 2. Section 6252.7 is added to the Government Code, to read:

6252.7. Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency, as defined in Section 54951, shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available.

SEC. 3. Section 54952.2 of the Government Code is amended to read:

54952.2. (a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled

program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

PLAINTIFF AND PETITIONER DONNA FRYE'S SEPARATE STATEMENT OF DISPUTED AND ADDITIONAL FACTS IN OPPOSITION TO DEFENDANT CITY OF SAN DIEGO'S MOTION FOR SEVERANCE AND FOR SUMMARY ADJUDICATION OF ISSUES

Exhibit 9

Item #S502
Tuesday, Aug. 1, 2017
(R-2018-41)

RESOLUTION NUMBER R- 311286

DATE OF FINAL PASSAGE AUG 04 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO APPROVE COUNCIL POLICY NO. ___ TITLED CONFLICT OF INTEREST WAIVERS.

WHEREAS, the City of San Diego (City) occasionally receives requests to waive potential conflicts of interest under the California Rules of Professional Conduct (CRPC), Rule 3-310(E); and

WHEREAS, CRPC, Rule 3-310 requires that the client give informed consent when its attorney or former attorney has a potential conflict of interest; and

WHEREAS, CPRC, Rule 3-600 defines "the client" as the highest authorized officer, employee, body, or constituent overseeing the particular matter; and

WHEREAS, depending upon the matter, the client authorized to waive a potential or actual conflict of interest will be the City Council (Council) as the legislative body of the City; and

WHEREAS, the Council Policy provides guidance on when conflicts of interest may be waived; and

WHEREAS, the Council Policy outlines a procedure for notifying Council in writing of requests for a waiver of potential conflicts of interest that concern matters for which the City Attorney has determined Council to be "the client" under CPRC, Rule 3-600; and

WHEREAS, the Rules Committee reviewed the proposed Council Policy on Conflict of Interest Waivers at its July 27, 2017 meeting and voted 4-0 with one member absent to forward it to the full Council with a recommendation to adopt the proposed Council Policy; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council Policy No. ___ titled "Conflict of Interest Waivers" is approved and adopted.

BE IT FURTHER RESOLVED, that the City Clerk is instructed to update the Council Policy Manual to reflect the addition of this Council Policy.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Catherine C. Morrison
Deputy City Attorney

CCM: pd:jvg
July 28, 2017
Or.Dept: City Attorney
Doc. No.: 1550296

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 0 1 2017.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 8/3/17 _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on AUG 01 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☐	☒	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☐	☒	☐	☐
Georgette Gomez	☐	☒	☐	☐

Date of final passage AUG 04 2017.

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

AUTHENTICATED BY:

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

(Seal)

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

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311286

PROOF OF SERVICE

1. My name is **Monica Manriquez**. I am over the age of eighteen. I am employed in the State of California, County of **San Diego**.

2. My ✓ business ____ residence address is **Briggs Law Corporation, 4891 Pacific Highway, Suite 104, San Diego, CA 92110**.

3. On **July 26, 2019**, I served ____ an original copy ✓ a true and correct copy of the following documents: **Plaintiff/Petitioner Donna Frye's Separate Statement of Disputed and Additional Facts in Opposition to Defendant City of San Diego's Motion for Severance and for Summary Adjudication of Issues; Declaration of Cory J. Briggs; Supporting Exhibits,**

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

___ ***by personal service.*** I personally delivered the documents to the person(s) at the address(es) indicated on the list.

___ ***by U.S. mail.*** I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

___ deposited the envelope/package with the U.S. Postal Service

___ placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of _____, California.

___ ***by overnight delivery.*** I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

___ ***by facsimile transmission.*** Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

✓ ***by e-mail delivery.*** Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws ____ of the United States ✓ of the State of California that the foregoing is true and correct.

Date: **July 26, 2019** Signature: _____

SERVICE LIST

Donna Frye v. City of San Diego et al.
San Diego County Superior Court Case No. 37-2017-00041323-CU-MC-CTL

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