

# **Proposed City Council Response to San Diego County Grand Jury Report Entitled**

## **Updating San Diego's City Charter:**

### **A Recommendation to Amend the Charter's Provisions Related to Removal of Elected Officials**

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

#### **INTRODUCTION**

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

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

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

#### **FINDINGS**

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

**Response: The City agrees with the finding.**

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

**Response: The City agrees with the finding.**

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

## **RECOMMENDATIONS**

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

**Response: The recommendation requires further analysis.**

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

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

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

**Response: The recommendation has been implemented.**

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

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

**Response: The recommendation requires further analysis.**

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

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

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

**Response: The recommendation requires further analysis.**

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