

CITY OF SAN DIEGO

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

MEASURE E

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

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

Full text of this measure follows the argument.

BALLOT TITLE

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

BALLOT SUMMARY

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

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

CITY ATTORNEY'S IMPARTIAL ANALYSIS

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

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

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

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

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

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

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

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

FISCAL IMPACT STATEMENT

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

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

ARGUMENT IN FAVOR OF MEASURE E

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

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

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

This Charter amendment will:

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

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

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

SHERRI LIGHTNER
Council President
City of San Diego

JERRY SANDERS
President and CEO
San Diego Regional Chamber
of Commerce

HANEY HONG
President and CEO
San Diego County
Taxpayers Association

JEANNE BROWN
President
League of Women Voters
of San Diego

ARGUMENT AGAINST MEASURE E

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

FULL TEXT OF MEASURE E

ARTICLE II

NOMINATIONS AND ELECTIONS

SECTION 7: ELECTIVE OFFICERS RESIDENCY REQUIREMENT

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

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

ARTICLE III

LEGISLATIVE POWER

SECTION 12: THE COUNCIL

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

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

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

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

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

FULL TEXT OF MEASURE E (CONTINUED)

- ~~(i) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.~~
- ~~(ii) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.~~
- ~~(2) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy. Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term. For purposes of this Charter section 12, a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(f). If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.~~
- ~~(f)(e) It is the duty of the 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.~~
- ~~(g)(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.~~
- ~~(h)(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 Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.~~
- ~~(h) Whenever a vacancy exists in the office of a Councilmember, the chief of staff for the departing Councilmember shall manage the office of the Councilmember under the authority of the Council President, until a replacement is appointed or elected pursuant to the procedures for filling vacancies provided by this Charter.~~

FULL TEXT OF MEASURE E (CONTINUED)

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 40: CITY ATTORNEY

(third paragraph) The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

. . .

(thirteenth paragraph) The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. ~~In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.~~

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

ARTICLE VII

FINANCE

SECTION 108: FORFEITURE OF OFFICE FOR FRAUD

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

FULL TEXT OF MEASURE E (CONTINUED)

ARTICLE XIV

MISCELLANEOUS PROVISIONS

SECTION 217: NO PAYMENT FOR OFFICE

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

SECTION 218: NO CONTRIBUTIONS FOR EMPLOYMENT

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

ARTICLE XV

STRONG MAYOR FORM OF GOVERNANCE

SECTION 265: THE MAYOR

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

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

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

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

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

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

FULL TEXT OF MEASURE E (CONTINUED)

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

FULL TEXT OF MEASURE E (CONTINUED)

ARTICLE XVI

ELECTIVE OFFICERS

SECTION 300: VACANCY IN ELECTIVE OFFICE

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

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

SECTION 301: REMOVAL FOR CAUSE

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

FULL TEXT OF MEASURE E (CONTINUED)

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

SECTION 302: SUCCESSION TO ELECTIVE OFFICE

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

FULL TEXT OF MEASURE E (CONTINUED)

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

END OF MEASURE