

# SAN DIEGO UNIFIED SCHOOL DISTRICT

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

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## MEASURE D.

**CHARTER AMENDMENT: PROCEDURES TO REMOVE SCHOOL BOARD MEMBERS FOR CAUSE AND TO FILL VACANCIES.** Shall the City Charter be amended to include the office of School Board member from the San Diego Unified School District under City laws that address removal of elected officials for cause, filling vacancies in elected office, and succession to office?

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This measure requires approval of a simple majority (50% plus 1) of those voting on the measure.  
Full text of this measure follows the argument.

### OFFICIAL TITLE AND SUMMARY

#### BALLOT TITLE

Charter Amendments to Provide Procedures for Filling Vacancies, Removal for Cause, and Succession to Office for Members of the San Diego Unified School District Board of Education

#### BALLOT SUMMARY

This measure would amend the San Diego City Charter (Charter) to bring members of the Board of Education of the San Diego Unified School District (School Board) under City laws that provide procedures to remove elected officials for cause, to fill vacancies, and to govern succession to the office.

The Charter currently includes similar vacancy, removal, and succession laws for the City's elective offices of Mayor, City Attorney, and member of the City Council (Council). The California Constitution allows Charter cities like San Diego to include such provisions affecting School Board members in a city's charter.

Amendments to Charter section 66 (Board of Education) would provide references to how School Board seats will be filled after a vacancy, refer to other laws to be added by this measure, and make minor clarifying edits to the section.

Amendments to Charter section 300 (Vacancy in Elective Office), section 301 (Removal for Cause), and section 302 (Succession to Elective Office) add the office of School Board member to existing laws, with certain modifications to conform to procedures of the San Diego Unified School District (School District).

To be approved, the measure requires the affirmative vote of a majority of those qualified electors voting on the measure and registered to vote within the geographic boundaries of the School District.

The measure was proposed by Councilmember Chris Cate and Councilmember Vivian Moreno during a process in which Councilmembers submitted ballot measure proposals for consideration by a Council standing committee and then the full Council. The measure was considered in multiple hearings before the Council voted to place the measure on the ballot. If approved, the Charter would be amended after the amendments are chaptered by the California Secretary of State.

Voters may note that Charter section 66 is the subject of a separate Charter amendment measure on the November 3, 2020, ballot that would establish district-only elections for the School Board. The amendments to Charter section 66 that are proposed in the two measures are not in conflict; each involves separate subjects requiring separate approval. The amendments in both measures are identical

## BALLOT SUMMARY (CONTINUED)

in part. If both measures are approved by the voters, the City of San Diego intends for both sets of amendments to Charter section 66 to take effect and to be submitted for chaptering by the California Secretary of State.

### CITY ATTORNEY IMPARTIAL ANALYSIS

The California Constitution authorizes charter cities that include school districts to provide for “the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.” Cal. Const. art. IX, § 16(a). This is the limit of a charter city’s authority over a school board.

This ballot measure would amend the San Diego City Charter (Charter) to add procedures related to the elected members of the Board of Education (School Board) of the San Diego Unified School District (School District). If approved, amendments would bring School Board members under existing City laws providing procedures to remove elected officials for cause, fill vacancies in their seats, and govern succession to the office.

Four Charter sections would be amended:

- Section 66 (Board of Education) governs the composition and elections of the School Board. Amendments refer to the proposed new laws in the measure, stating that they address when a vacancy in the office of School Board member is deemed to occur, and when a School Board member shall be removed for cause. Amendments state that vacancies shall be filled as provided in the section, which includes election procedures. Amendments also include minor edits for consistency with other Charter sections.
- Section 300 (Vacancy in Elective Office) provides procedures when a vacancy occurs in the office for reasons including death, residency issues, incapacity, removal, certain convictions, or resignation. A School Board member is no longer eligible to serve if the member ceases to be a resident and elector of the subdistrict the member was elected to represent. A member’s resignation would be effective on the date specified in a resignation letter, or, if there is no date, upon the date the letter is received by the School District’s Board Action Officer.
- Section 301 (Removal for Cause) provides procedures to remove a School Board member for cause for dereliction of duty or malfeasance in office. Dereliction of duty means an adjudication that the School Board member failed, refused, or neglected to perform the duties of the office, except when prevented by illness, injury, or other reasonable cause. Malfeasance in office means the School Board member was convicted for crimes of moral turpitude or crimes involving a violation of official duties. If at least three-fourths of the School Board members vote that cause exists to remove the member, the School Board would cause a special election to be held. Voters would be asked to decide whether to remove and replace the School Board member.
- Section 302 (Succession to Elective Office) refers to Charter procedures that would apply for a new School Board member to succeed to the office.

This measure related to the School District has been submitted to voters registered to vote within School District boundaries, as required by the California Constitution. If approved, amendments would take effect after they are chaptered by the California Secretary of State.

## **FISCAL IMPACT ANALYSIS**

This measure would amend San Diego City Charter (Charter) sections 300, 301, and 302 to add the elective office of member of the Board of Education (School Board) of the San Diego Unified School District (School District) to City laws that provide procedures for the elective officer's removal for cause, filling a vacancy in the seat, and addressing succession in office. The measure would also amend Charter section 66, Board of Education, to address filling a vacancy on the School Board.

**There is no fiscal impact associated with these Charter amendments.**

## ARGUMENT IN FAVOR OF MEASURE D

### THERE IS NO WAY TO REMOVE A SCHOOL BOARD MEMBER CONVICTED OF A CRIME

In 2019, four of the five board members of the San Diego Unified School District called for the resignation of one of their own members following allegations from four individuals in politics that he sexually harassed or assaulted them.

But even if a school board member were convicted of a crime, there is no way for the school board to remove them.

#### **Measure D changes this process.**

In 2016, voters overwhelmingly approved Measure E, a process for how the Mayor, City Attorney, and City Councilmembers can be removed from office. However, San Diego Unified School Board Members were inadvertently left out.

Previously, the City Charter only allowed for the removal of elected officials by resignation or recall. The recall process is extremely costly and time consuming.

Measure E set up a process 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.

The changes incorporated best practices used by other major cities regarding the removal of elected officials from office.

#### **Measure D would apply this same process to school board members.**

### WE NEED TO ACT NOW, BEFORE THE NEXT SCANDAL

Our City Charter should protect voters from politicians who abuse their office by committing crimes.

We need to have a process set up before these scandals occur, so we can respond quickly.

#### **School board members shouldn't hold public office if they are convicted of serious crimes.**

### MEASURE D PROTECTS THE PUBLIC FROM POLITICIANS WHO ARE CONVICTED OF CRIMES BUT REFUSE TO DO THE RIGHT THING AND RESIGN.

VOTE YES ON MEASURE D

CHRIS CATE  
Councilmember

VIVIAN MORENO  
Councilmember

RICARDO DANIEL CASTILLO  
Retired City Heights Teacher  
Retired Navy

FRANCINE MAXWELL  
President, NAACP San Diego Branch

NO ARGUMENT AGAINST MEASURE D WAS FILED IN THE OFFICE OF THE CITY CLERK.

# FULL TEXT OF MEASURE D

*Note for voter pamphlet:*

Section 66 of the City Charter is also the subject of a separate Charter amendment ballot measure on the November 3, 2020 ballot that would establish district-only elections for the Board of Education. The amendments proposed in the two Charter amendment measures are not in conflict and involve separate subjects requiring separate approval.

If both measures are approved by the voters, the City of San Diego intends for both sets of amendments to take effect and to be submitted for chaptering by the California Secretary of State. This ballot measure adds two new paragraphs to the section about vacancies in office, which are unrelated to the district-only elections subject of the other pending measure and do not conflict with its provisions. The amendments to the last two paragraphs of Charter section 66 in this measure are identical to the amendments in the other measure. The additional amendments in the separate measure, regarding the elections process, do not conflict with the proposed amendments below.

## ARTICLE VI

### BOARD OF EDUCATION

#### SECTION 66: BOARD OF EDUCATION

The government of the San Diego Unified School District shall be vested in a Board of Education, composed of five members who shall be nominated and elected at the regular municipal primary elections and general municipal elections at the same time as the election of Councilmembers. At the municipal primary election there shall be chosen by the registered voters of each Board of Education District two candidates for the office of any Board of Education member from a District whose term expires the succeeding December. At the general municipal election the registered voters of the whole San Diego Unified School District shall select from among the candidates chosen at the primary election in each district one candidate for the office of each Board of Education member whose term expires the succeeding December. Each candidate for the Board of Education shall have been a registered voter of the San Diego Unified School District and an actual resident of the election district from which the candidate seeks to be nominated for thirty (30) days immediately preceding filing of a nomination petition. The members shall serve for a term of four years from and after 10 a.m. the first Monday after the first day of December next succeeding this election and until their successors are elected and qualified, except as herein provided.

Notwithstanding any other provision of this Charter, and commencing in 2020, no person shall serve more than three four-year terms as a member of the Board of Education. Board members who hold the office as of the date of the Municipal General Election in 2020 shall not have prior or current terms counted for purposes of applying this term limit provision.

Article XVI of this Charter shall govern: (1) when a vacancy in the office of member of the Board of Education shall be deemed to occur, and (2) when a member of the Board of Education shall be removed for cause.

Vacancies for the office of member of the Board of Education shall be filled as provided in this Charter section.

Any vacancy occurring in on the Board shall be filled from the election district in which the vacancy occurs, by appointment by the remaining Board members; but in the event that the said remaining members fail to fill such vacancy by appointment within thirty (30) days after the vacancy occurs, they must immediately cause to be held a primary election in the district in which the vacancy occurs and a general election within the entire school district as set forth in this section to fill such vacancy; provided, however, that any person appointed to fill such vacancy shall hold office only until the

## FULL TEXT OF MEASURE D (CONTINUED)

next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term.

For the purpose of electing members of the Board of Education, the San Diego Unified School District shall be divided into five (5) districts as nearly equal in registered voter population as practicable. For the first primary and regular election held under this section, as amended, the boundaries of such election districts shall be established by the Board of Education as such Board existed on the effective date of the amendment to this section. Thereafter, the boundaries of such election districts shall be subject to alteration and change under the provisions of this section. The Board of Education, by resolution, may change and alter the boundaries of the election districts and in the resolution may describe the new boundaries by reference to a map on file in the office of the City Clerk; a metes and bounds description of the new boundaries need not be contained in the said resolution.

### ARTICLE XVI

#### ELECTIVE OFFICERS

##### SECTION 300: VACANCY IN ELECTED OFFICE

For purposes of this section, elective office includes the offices of Mayor, Councilmember, City Attorney, and members of the Board of Education of the San Diego Unified School District. 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. For the Mayor or City Attorney, the elective official~~ 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) For a Councilmember, the Councilmember moves from the district that the Councilmember was elected to represent. Redistricting shall not cause a vacancy in the office of a Councilmember.
- (d) For a member of the Board of Education of the San Diego Unified School District, the Board member ceases to be a resident and elector of the sub-district within the school district that the member was elected to represent. Redistricting shall not cause a vacancy in the office of a member of the Board of Education.
- (ee) 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.
- (ef) 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, in the case of the Mayor, City Attorney, or a Councilmember, or, upon the date of receipt of the letter by the Board Action Officer of the San Diego Unified School District, in the case of a member of the Board of Education.
- (eg) 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.

## FULL TEXT OF MEASURE D (CONTINUED)

- (fh) 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.
- (gi) 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.
- (hj) 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~~ The Mayor, City Attorney, Councilmembers, and members of the Board of Education of the San Diego Unified School District are 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.
- (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, if the elective officer at issue is the Mayor, City Attorney, or a Councilmember. If the elective officer at issue is a member of the Board of Education, the Board Action Officer of the San Diego Unified School District shall provide notice of the conviction or adjudication to the Board of Education and the subject member.
  - (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 elective 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 of, or adjudication of dereliction of duty by, the Mayor, City Attorney, or member of the Council, the Council may proceed to vote on calling a special municipal election as provided by subsection (d). Upon notification from the Board Action Officer of the San Diego Unified School District of a criminal conviction of, or adjudication of dereliction of duty by, a member of the Board of Education, the San Diego Unified School District shall follow the procedures in subsection (e).
- (d) Upon an affirmative vote of no less than three-fourths of the Council (currently seven of nine Councilmembers) that cause exists for removal of the Mayor, City Attorney, or

## FULL TEXT OF MEASURE D (CONTINUED)

a Councilmember, 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 measure 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.

- (de) Upon an affirmative vote of no less than three-fourths of the members of the Board of Education of the San Diego Unified School District that cause exists for removal of a Board member, the Board shall cause a special election to be held to submit to voters a measure to remove and replace the Board member by a majority vote, using the procedures set for Board member elections in Charter section 66. The election shall be held within 180 days of the vacancy. If the Board member's removal occurs within 180 days of a scheduled municipal or statewide election, the Board may consolidate the special election with that election.
- (ef) 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 Mayor, City Attorney, or a Councilmember occurs by reason of a successful recall or removal election, the Council shall adopt procedures to fill the vacancy. A vacancy in the office of member of the Board of Education of the San Diego Unified School District shall be filled as provided in Charter section 66. The School Board may adopt additional procedures for the conduct of the election that are consistent with this Charter, as may be necessary.
- (b) If a vacancy occurs in the office of an elective officer Mayor, City Attorney, or a Councilmember 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 D (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 runoff 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**