



THE CITY OF SAN DIEGO
COUNCIL PRESIDENT MYRTLE COLE

FOURTH DISTRICT

November 8, 2018

Judge Peter C. Deddeh
Presiding Judge
San Diego Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

Re: Grand Jury Report: "Improving the San Diego Citizens' Initiative Process"

Dear Judge Deddeh:

Pursuant to California Penal Code Section 933.05(a),(b) and (c), the City of San Diego provides the attached response from the Mayor and City Council to the applicable findings and recommendations included in the above referenced Grand Jury Report.

If you require additional information or have any questions, please do not hesitate to contact Erin Demorest, Director of Legislative Affairs, at 619-533-3920.

Sincerely,

A handwritten signature in black ink that reads "Myrtle Cole".

Myrtle Cole

Encl: 1. City response to Grand Jury Report: "Improving the San Diego Citizens' Initiative Process"
2. City Council Resolution R-312023

**City Response to
San Diego County Grand Jury Report Titled
“Improving the San Diego Citizens’ Initiative Process”**

Pursuant to California Penal Code section 933(c), the City of San Diego Mayor, City Council, and City Attorney provide the following responses to the findings and recommendations which are included in the above referenced Grand Jury Report (Report).

FINDINGS 01 THROUGH 04

Finding 01: *The democratic process will work well when the voters receive reliable, verifiable, and objective information.*

Response: The Mayor, City Council, and City Attorney agree with the Grand Jury’s finding.

See Response to Recommendation 18-20, as the Report does not consider the applicable information that the City of San Diego already provides to all voters.

Finding 02: *The California Election Code §9212 and the Ballot Initiative Transparency Act of 2014 provide an example for municipalities in evaluating the potential impacts of ballot initiatives.*

Response: The Mayor, City Council, and City Attorney partially disagree with the Grand Jury’s finding.

The City notes that California Elections Code § 9212 and the Ballot Initiative Transparency Act of 2014 do not apply to Charter cities such as San Diego that have not adopted the California Elections Code for their elections law. Thus, the City is not in a position to assess them as examples. Additionally, in order to incorporate certain requirements of these laws (including an early public comment period and additional analyses beyond those San Diego already provides), the City would need to amend its elections laws and processes, and the San Diego County Registrar of Voters may be required to provide additional and earlier reports than currently required regarding signature verification. Under the City’s elections laws, election timelines would not always be conducive to implementing portions of these laws. For example, measures may be qualified without sufficient time for the City to conduct certain analysis detailed in § 9212. Moreover, such analysis actually may be superfluous to what is already provided to all voters in the ballot pamphlet, as well as other analyses that may be prepared by the City Attorney’s Office, Independent Budget Analyst, or other City departments during the Council’s process of considering whether to adopt an initiative measure outright or place the initiative measure on a ballot.

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Finding 03: *The new California Election Code provides a model of how an extended period of review and analysis can provide unbiased and educational information to the voting public.*

Response: The Mayor, City Council, and City Attorney partially disagree with this finding.

The City notes that the initiative provisions of the California Elections Code do not apply to Charter cities such as San Diego that have not adopted the California Elections Code as their governing elections law. Additionally, as alluded to in the response to Finding 02, the timing of preparing a § 9212 analysis may not synchronize with the City’s elections laws and processes. Whether the new “model” of the Ballot Initiative Transparency Act or § 9212 would result in an “extended period” of review at a local level could depend on when a given initiative is submitted and qualified, and the timing of this in connection with the date of the next election.

Finding 04: *The City of San Diego may use public funds to educate the voters in an unbiased and informative way on issues raised by initiatives.*

Response: The Mayor, City Council, and City Attorney partially disagree with the Grand Jury’s finding.

The City agrees that unbiased education of voters is critical and that California Government Code section 54964 allows public funds to be used for specific educational purposes. The section prohibits the use of public funds unless the exception below applies:

- (c) This section does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if both of the following conditions are met:
 - (1) The informational activities are not otherwise prohibited by the Constitution or laws of this state.
 - (2) The information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

The Report does not consider the full extent of how the City of San Diego already educates voters in an “unbiased and informative way” about initiatives. This is accomplished through public hearings and the recitals in an underlying ordinance placing a measure on the ballot, the Ballot Title and Summary, the Fiscal Impact Analysis, and the Impartial Analysis of all ballot measures. These materials (other than the ordinance recitals) are provided in the voter pamphlet sent to all voters. All of the materials are freely available on the City Clerk’s website, under a tab devoted to election materials. Additionally, the City Attorney’s Office, Independent Budget Analyst, or other City

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departments may provide additional public reports about issues related to initiatives as they come before the City Council for discussion.

RECOMMENDATION

Recommendation 18-20: *Consider a standard practice of commissioning a report through city agencies to detail the possible impact of an initiative on the city.*

Response: The recommendation will not be implemented because it is not warranted.

Legal Background: The City of San Diego is a Charter city with its own election code.

The California Constitution grants charter cities complete authority over their municipal affairs. Cal. Const. art. XI, §§ 5, 11(a). The California Constitution states that this includes authority to provide for the “conduct of city elections.” *Id.*, § 5(b).

The San Diego Charter governs City elections and requires the City to adopt an election code ordinance, “providing an adequate and complete procedure to govern municipal elections.” San Diego Charter § 8. The Charter states, “All elections provided for by this charter, whether for choice of officers or submission of questions to the voters, shall be conducted in the manner prescribed by said election code ordinance.” *Id.*

San Diego Charter § 23 requires the Council to include in the election code ordinance an “expeditious and complete procedure for the exercise by the people of initiative.” The City thus adopted Municipal Code sections 27.1001 through 27.1051 to set forth the City’s initiative procedures. The initiative sections in the California Elections Code do not apply to the City of San Diego.

Additionally, San Diego Municipal Code (SDMC) § 27.0101 states that the purpose and intent of the City’s election code is: “. . . to provide an expeditious and complete procedure for the people’s right to exercise the vote. If there is any ambiguity or contradiction between the provisions of general law and the provisions of this article, the provisions of this article shall govern. The divisions relating to initiative, referendum and recall (including the initiative provisions relating to Charter amendments) are exclusive as required by the Charter.”

San Diego’s election laws regarding initiative, as stated in its Charter and Municipal Code, exclusively constitute its governing law. The City’s Elections Ordinance states, however, that if there is no controlling provision in San Diego’s election laws, state elections law may be relied upon for guidance. SDMC § 27.0106(d) (“All elections shall be conducted under the Charter and this article.

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The City Clerk and City Council may rely on state elections law for guidance if there is no controlling provision in this article.”).

Response to Recommendation

The City notes that the provision of the California Elections Code addressed in this Grand Jury Report (§ 9212) does not apply to Charter cities such as San Diego. For that reason, the City has no experience with this process and cannot independently assess whether it has resulted in a “model” of “unbiased” information being provided to the public. Additionally, as alluded to in the response to Finding 02, the timing of preparing a § 9212 analysis may not synchronize with the City’s elections laws and processes.

The City of San Diego already provides “reliable, verifiable, and objective information” in the public hearings and ordinances placing individual measures on the ballot, and in the Ballot Title and Summary, the Impartial Analysis, and the Fiscal Impact Analysis its attorneys, Auditor, Independent Budget Analyst and mayoral staff prepare for every City ballot measure. This information (other than the ordinance recitals) is provided to voters in the ballot pamphlet sent to every City voter.

All of this information is available to all voters on the City’s website (along with arguments submitted in favor of or against a measure). These materials are well-disseminated and freely available to all voters. There is nothing in the Report that suggests why the materials produced under the current process are insufficient. To the extent that voters do not review the materials provided, an additional analysis, as suggested by the Grand Jury, may not address that issue.

To the extent that the “fact” portions of the Report disregard or do not mention the work that the City does to educate voters about every municipal ballot measure, the City disagrees with statements in the Report. For example, the Report does not cite the SDMC sections and the provision for an Impartial Analysis of every ballot measure, which the City Attorney prepares. Although certain ballot materials are labeled “analyses,” they are based on facts and presented neutrally, without advocacy, to voters, in compliance with legal standards.

The City Attorney’s Office, Independent Budget Analyst, or other City departments may also prepare additional public reports about issues related to initiatives as they come before the City Council for discussion.

The Report reviews some sections of the SDMC, but does not consider California case law that governs the content of ballot materials and sets legal standards the City must follow when preparing such materials for voters. The SDMC also sets

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out standards that are not captured in the Report. (For example, see SDMC § 27.0404, noting that a voter can bring a writ of mandate to seek judicial remedies for materials that are false or misleading; thus, this requires impartial ballot materials).

Lastly, requiring an additional analysis does not take into account the required staff time and resources and the timing of submission to the City Clerk of a given ballot measure. Measures may be qualified without sufficient time for the City to conduct separate studies, and such analysis may be superfluous to what is provided to all voters in the ballot pamphlet.

RESOLUTION NUMBER R- 312023

DATE OF FINAL PASSAGE NOV 05 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE CITY COUNCIL'S RESPONSE TO THE 2017-2018 SAN DIEGO COUNTY GRAND JURY REPORT TITLED, "IMPROVING THE SAN DIEGO CITIZENS' INITIATIVE PROCESS."

WHEREAS, on May 23, 2018, the 2017-2018 San Diego County Grand Jury (Grand Jury) filed a final report titled, "Improving the San Diego Citizens' Initiative Process" (Report) that requested a response from the Mayor, City Council, (Council) and City Attorney; and

WHEREAS, the Report discusses the San Diego citizens' initiative process and providing San Diego City voters with adequate information on citizens' initiatives; and

WHEREAS, the Report includes four findings and one recommendation directed to the Mayor, Council, and City Attorney; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the response from the Mayor, Council, and City Attorney are due to be submitted to the Presiding Judge of the Superior Court on November 16, 2018, as the City requested and received an extension of time to respond; and

WHEREAS, the response to the Report required that the Mayor, Council, and City Attorney respond to Findings 01 through 04 and to Recommendation 18-20; and

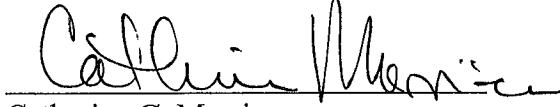
WHEREAS, the Office of the Independent Budget Analyst has proposed a Council response to the Report, joined by the Mayor and City Attorney, as set forth in IBA Report No. 18-33, dated October 2, 2018, the Council's consideration; and

WHEREAS, on October 10, 2018 the proposed response to the Report was submitted to the Rules Committee; NOW, THEREFORE,

BE IT RESOLVED, that the City Council of the City of San Diego approves and adopts as its own the response to the 2017-2018 San Diego County Grand Jury Report titled, "Improving the San Diego Citizens' Initiative Process," as set forth in IBA Report No. 18-33, dated October 2, 2018.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than November 16, 2018.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Catherine C. Morrison
Deputy City Attorney

CCM:jvg
October 16, 2018
Or.Dept:IBA
Doc. No.: 1856804

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 29 2018.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Kevin Faulconer
KEVIN L. FAULCONER, Mayor

Approved: 11/5/18
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on OCT 29 2018, by the following vote:

Councilmembers	Yea	Nay	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 05 2018

(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 Stacy Beach for Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

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