
PERFORMANCE AUDIT OF THE CITY'S MANAGEMENT OF ITS ADVISORY BOARDS

The City Can Take Additional Steps to Improve the Process for Filling Available Positions, Help Increase Transparency and Promote Public Participation, and Monitor Efficiency and Effectiveness

Office of the City
Auditor

City of San Diego



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THE CITY OF SAN DIEGO

June 1, 2017

Honorable Mayor, City Council, and Audit Committee Members
City of San Diego, California

Transmitted herewith is a performance audit report of the City's management of its Advisory Boards. This report was conducted in accordance with the City Auditor's Fiscal Year 2017 Audit Work Plan, and the report is presented in accordance with City Charter Section 39.2. The Results in Brief are presented on page 1. Audit Objectives, Scope, and Methodology are presented in Appendix B. Management's responses to our audit recommendations are presented after page 67 of this report.

We would like to thank staff from the Mayor's Office, the City Attorney's Office, the City Clerk's Office, the City Administration, the Communications Department, other departments, and Advisory Board members we spoke to for their assistance and cooperation during this audit. All of their valuable time and efforts spent on providing us information is greatly appreciated. The audit staff members responsible for this audit report are Andy Hanau, Danielle Novokolsky, Danielle Knighten, and Kyle Elser.

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Table of Contents

Results In Brief	1
Background	5
Audit Results	14
Finding 1: The City Can Improve Its Process for Filling Vacant Member Positions and Replacing Members Whose Terms Have Expired	14
Finding 2: The City Should Provide Additional Training and Resources to Help Advisory Boards Comply with California’s Open Meeting Law and to Help Increase Transparency and Public Participation	32
Finding 3: The City Can Take Additional Steps to Ensure that the Organization and Categorization of Advisory Boards Mitigates the Risk of Unnecessary Overlap, and that All Existing Advisory Boards Serve a Valuable Purpose for the City	39
Conclusion	47
Recommendations	49
Appendix A: Definition of Audit Recommendation Priorities	54
Appendix B: Objectives, Scope, and Methodology	55
Appendix C: Active Advisory Boards	58
Appendix D: Memorandum From the City Attorney’s Office	59
Management’s Responses	68

Results In Brief

The City of San Diego (City) values a high degree of civic engagement and participation in public decision-making. To that end, the City Council has created more than 40 Advisory Boards, which provide the City's residents the opportunity to volunteer their expertise and insight on a wide range of important civic matters. For example, the City's Advisory Boards currently advise the Mayor and the City Council on issues including, but not limited to: police/community relations; affordable housing and community development funding allocations; historical and environmental resource protection; and library and park policy issues.¹

Advisory Boards best serve the City when members can regularly meet to consider agenda items and advise on issues impacting the City. Therefore, it is important for qualified candidates to be quickly identified and appointed to fill vacant positions. In addition, to ensure that Advisory Boards draw upon ideas from the City's diverse talent pool of residents, the City should, when possible, act quickly to replace members whose terms have expired. The City should also ensure that Advisory Board members are given the information and resources they need to comply with transparency requirements and effectively communicate board activities to decision-makers and the public. And lastly, the City should periodically review existing Advisory Boards to ensure that they are organized effectively and are continuing to provide a valuable service to the City.

We found several areas where the City can improve its process for identifying candidates and filling available Advisory Board positions, increase Advisory Board transparency and promote public awareness and participation in board activities, and monitor Advisory Boards to ensure they are operating efficiently and are providing a valuable service. Specifically, we found:

¹ The City has 41 Advisory Boards, 30 of which are active. For a complete list of the City's current active Advisory Boards, see **Appendix C.**

Finding 1: The City Can Improve Its Process for Filling Vacant Member Positions and Replacing Members Whose Terms Have Expired

As of March 2017, over half of the 334 member positions on the City's active Advisory Boards were either vacant or filled by members serving on expired terms. The high number of vacancies has impacted several Advisory Boards' ability to meet quorum. In addition, allowing members to continue to serve long after their term has expired may limit opportunities for other qualified residents to serve, limiting the range of viewpoints the City hears from regarding important matters. We found that the number of vacancies and members serving on expired terms is high because:

- The City Council may not be well-informed of its Charter authority to fill Advisory Board seats if the Mayor has not taken action to appoint within 45 days of a position becoming vacant or a member's term expiring;
- Some Advisory Board positions require the Mayor to select an appointee from nominees provided by the City Council, but there is no recourse if the City Council does not provide nominees in a timely manner;
- There is currently no formally documented procedure including timelines for the candidate vetting process, and the time needed to move a nominee through the appointment process can be lengthy; and
- There is currently no standard strategy for advertising available positions to the public beyond the notice of vacancy postings that are required by State Law.

Finding 2: The City Should Provide Additional Training and Resources to Help Advisory Boards Comply with California's Open Meeting Law and to Help Increase Transparency and Public Participation

All Advisory Boards are required to comply with the Brown Act, California's open meeting law. The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies such as the City's Advisory Boards. In addition to Brown Act compliance, it is important for Advisory Boards to be transparent in their actions to promote public participation. However, we found that the City can take additional action to advise Advisory Board members on how to comply with the Brown Act and can help ensure that Advisory Boards are transparent. Specifically, we found:

- Although compliance with the Brown Act is the responsibility of the members of Advisory Boards, these members are volunteers and may not be fully aware of the Brown Act requirements. Currently, there is no

requirement for all Advisory Board members to receive training on the Brown Act.

- Although many Advisory Boards currently post meeting agendas and minutes online, we found that the City has not provided all Advisory Boards with websites on which to post this information. There is also no standard process for posting agendas, minutes, and other key documents online, and some Advisory Boards may not be aware of how to post information or do not post information consistently.

Finding 3: The City Can Take Additional Steps to Ensure that the Organization and Categorization of Advisory Boards Mitigates the Risk of Unnecessary Overlap, and that All Existing Advisory Boards Serve a Valuable Purpose for the City

According to multiple City staff, there are issues with overlap between some Advisory Boards; some Advisory Boards may have overly restrictive membership requirements that make it difficult to find qualified candidates; and some Advisory Boards may have outlived their usefulness to the City. Although the Mayor's Office is taking action to review existing Advisory Boards and to address some of these issues on a one-time basis, we found that the City can take additional steps to ensure that the issues addressed by the Mayor's Office's review do not reoccur. Specifically, we found that these issues may reoccur because:

- There is currently no standardized, formal process to review proposed new Advisory Boards to determine whether they can be folded into existing Advisory Boards or to analyze their expected cost to the City, thus creating the potential for overlap and inefficiency.
- Not all Advisory Boards currently have a requirement to report to the City Council, and there is no mechanism to hold boards with reporting requirements accountable for meeting this obligation. Therefore, the City Council does not regularly receive information on each Advisory Board's mission, activities, and challenges.
- The City does not have a formal, periodic review process to determine whether permanent Advisory Boards continue to be useful, and some boards that may have outlived their usefulness continue to operate.

Recommendations

We made a total of 14 recommendations to improve the process to identify and appoint qualified candidates to the City's Advisory Boards, help increase transparency and promote public participation, and monitor the efficiency and effectiveness of the City's Advisory Boards.

The Mayor's Office, the City Attorney's Office, the City Clerk's Office, and the City Administration agreed with all 14 recommendations.

Background

Introduction The City of San Diego (City) values a high degree of civic engagement and participation in public decision-making. To that end, City Charter Section 43(a) grants the City Council the authority to create Advisory Boards that provide citizens the opportunity to volunteer their services on significant matters.²

At the request of Councilmember Zapf, we conducted a review of the City's management of its Advisory Boards. Specifically, our objectives were to:

- **Objective 1:** Evaluate whether the City's process to fill Advisory Board positions is effective and efficient.
- **Objective 2:** Evaluate whether the City provides Advisory Boards with adequate information and resources to comply with applicable transparency requirements and best practices, such as the Brown Act (California's open meeting law).
- **Objective 3:** Evaluate the processes to create and periodically review Advisory Boards, and identify potential opportunities to standardize their organization and operation.

The City Has a Wide Variety of Advisory Boards Advisory Boards often include members who are passionate about the particular subject and may be subject-matter experts. As a result, Advisory Boards can provide valuable insight to the City on a wide range of issues. For example, the Independent Rates Oversight Committee advises the Mayor and the City Council on issues related to the City's water and wastewater systems, and includes members who are current ratepayers or have backgrounds in engineering, law, or environmental issues. Another Advisory Board, the Consolidated Plan Advisory Board, provides advice on the allocation of community development funding, such as Community Development Block Grants, and includes members

² For the purposes of this audit, we focused on Advisory Boards, which are permanent boards that are established by City Charter Section 43(a). The City also has temporary Advisory Committees that are established by City Charter Section 43(b). Other boards, commissions, and planning groups (e.g., community planning groups, Ethics Commission, Planning Commission, Audit Committee, etc.) are not covered within the scope of this audit.

who have interest and expertise in areas such as affordable housing, homelessness, and economic development.

According to the City Clerk's data, as of March 2017, the City had 41 Advisory Boards, of which 30 were active and 11 were inactive.³ **Exhibit 1**, below, describes the basic characteristics of Advisory Boards. For a complete listing of the City's current active Advisory Boards, see **Appendix C**.

Exhibit 1:

General Characteristics of Advisory Boards

Advisory Boards
Established under City Charter Section 43(a)
Permanent (created by ordinance)
May only be dissolved by ordinance
Consult and advise the Mayor, City Council, or City Manager
Do not direct the conduct of any department or division
Members are appointed by the Mayor with City Council confirmation*
Members are limited to a maximum of 8 consecutive years in office**
Members serve without compensation

*Per Charter Section 43(c), the City Council may make appointments to Advisory Boards if the Mayor has not made an appointment within 45 days of a vacancy. This is discussed in more detail later in this section and in Finding 1.

**Members can legally "hold over" on expired terms until their successors are appointed and confirmed.

Source: OCA generated based on City Charter Section 43(a) and a 2015 report from the City Attorney's Office to the Charter Review Committee.

³ Active boards are those that are currently meeting and conducting business. Inactive boards are those that are no longer meeting for a variety of reasons but have not been officially dissolved.

The Mayor, the City Council, and Other City Departments and Officials are Involved in Advisory Board Administration

The City's administration of Advisory Boards begins with their creation, and extends to identifying and vetting candidates to fill available positions, appointing qualified candidates, providing appointed members with information and resources to help them comply with applicable transparency requirements and best practices, and providing City staff assistance in Advisory Board operations. These wide ranging duties involve functions performed by the Mayor's Office, the City Council, the City Attorney's Office, and the City Clerk's Office, as well as City staff from the department(s) assigned to work with each Advisory Board. **Exhibit 2** shows the general responsibilities of each of these officials. The following sections then describe each role in greater detail.

Exhibit 2:

Summary of Roles in the Administration of Advisory Boards

	Mayor's Office	City Council	City Attorney's Office	City Clerk's Office	City Department/Staff Liaison
Role in the Administration of Advisory Boards	Proposes new Advisory Boards	Establishes new Advisory Boards	Drafts ordinances to create new Advisory Boards or to amend the Municipal Code for a given Advisory Board	Makes City Council and Mayoral actions known (e.g., creation of new Advisory Boards, modification of Advisory Boards, appointments, etc.)	Serves as the City's primary contact with the Advisory Board
	Manages the identification, recruitment, vetting, nominations, and confirmation process of applicants for appointment	Provides the Mayor's Office with nominees for certain positions	Reviews nominations for appointment to ensure nominees meet qualifications, analyzes all legal issues related to proposed appointments, prepares resolutions for Council confirmation, and attends the Council hearing to answer questions	Posts notifications of unscheduled vacancies (resignations) and adds scheduled vacancies (expiring terms) to Expiring Terms List	Provides information on City operations
		Confirms the Mayor's appointments		Posts information on each Advisory Board on the City Clerk's website	Attends Advisory Board meetings
	Manages appointee relations and any required modifications to procedures, the Municipal Code, the City Charter, and bylaws	Appoints members to available positions that have been available for over 45 days (if the Mayor has not taken action to appoint)	Provides training to Advisory Boards on Conflict of Interest Codes (when applicable), and the Brown Act (upon request)	Assists in outreach for available positions and forwards applications to the Mayor's Office	Assists Advisory Boards in drafting and posting meeting agendas and minutes
Provides legal advice to the Mayor's Office, the City Clerk's Office, and to City Departments/Staff Liaisons regarding Advisory Boards (the City Attorney's Office does not provide legal advice directly to Advisory Boards or to individual board members)			Updates a matrix of the City's various Boards and Commissions and sends to the Mayor's Office and City Council on a quarterly basis	Assists Advisory Boards in compiling periodic reports for the Mayor and City Council (if reports are required)	

Source: OCA, based on various interviews and documents regarding the administration of the City's Advisory Boards.

Role of the Mayor's Office

The Mayor's primary responsibility regarding Advisory Boards is to appoint members to fill vacancies created by expired terms, death or resignation of a member, or the creation of a new Advisory Board. The Mayor can also propose new Advisory Boards. The Mayor's Director of Appointments assists the Mayor by managing the identification, recruitment, vetting, nomination, and confirmation process of applicants for appointment to Advisory Boards. Mayoral staff also manages appointee relations, the establishment of new committees or boards, special projects, and any required procedural, Municipal Code, City Charter, and bylaw modifications.

To inform the public about vacancies, the Director of Appointments frequently attends meetings for leadership and community-based organizations, and speaks at conferences. She also consults with people who are policy experts in the particular subject area of certain Advisory Boards for recommendations.

Each Advisory Board has its own membership requirements, so the recruitment process varies depending on the board. In addition, according to the Mayor's Office, some Advisory Boards are harder to recruit for than others due to issues such as large time commitments for members or specialized qualifications required for eligibility. For example, a board may require one member from each City Council district, plus a certain number of subject experts. Large Advisory Boards (i.e., those with a large number of seats) can also be harder to fill because they tend to have more turnover.

Role of the City Council

Once the Mayor makes an appointment to an Advisory Board, the appointment must be confirmed by the City Council. In addition, for some positions, the Municipal Code requires the Mayor to appoint from nominees submitted by Councilmembers. The City Council can also provide nominees to serve in other Advisory Board positions.

Under City Charter Section 43(c), the City Council may also make appointments to most Advisory Board positions if the Mayor does not make an appointment within 45 days of a scheduled vacancy (when a sitting member's term expires) or an unscheduled vacancy (when a position becomes vacant due to

a member's resignation or death), or when a new Advisory Board is created. However, according to multiple City staff, the City Council has not exercised this power in several years.⁴

As the City's legislative body, the City Council and its Committees sometimes use information provided by Advisory Boards when making decisions, such as allocating Community Development Block Grant funds. The Municipal Code requires some Advisory Boards to provide periodic reports to the City Council and/or City Council Committees. In addition, the City Council may create and establish Advisory Boards by ordinance, and may by ordinance amend the mission and membership requirements for each board or dissolve existing boards if they are no longer needed.

Role of the City Attorney's Office

The City Attorney's Office performs three main responsibilities for the City's Advisory Boards:

1. Reviews nominations for appointments and conducts legal analysis to ensure nominees meet the qualifications.
2. Provides trainings to Advisory Boards on Conflict of Interest Codes and the Brown Act.
3. Provides legal advice regarding Advisory Boards on behalf of the City to the Mayor's Office, the City Clerk's Office, and City departments/staff liaisons.

The City Attorney's Office receives nominations for appointments to Advisory Boards via memos from the Mayor's Office. The City Attorney's Office is responsible for reviewing the nominations and conducting legal analysis to ensure the nominee meets the qualifications for the position. Member qualifications can be very specific and some Advisory Boards can require different qualifications for each position. The City Attorney's Office also stated that it is responsible for preparing resolutions for City Council confirmation and attending the City Council hearings to answer questions. In addition, the City Attorney's Office will draft ordinances upon request that the

⁴ According to multiple City staff, the last time the City Council exercised its authority to make appointments to Advisory Boards was in late 2013 and early 2014, when the position of Mayor was vacant and the Interim Mayor did not have the power to make appointments himself.

structure, duties, number of members, etc., be changed for a given Advisory Board.

As discussed in Finding 2, all Advisory Boards are required to comply with the Brown Act, which is California's open meeting law. The City Attorney's Office stated that it provides trainings to Advisory Boards on the Brown Act, upon request.

Depending on their role, some Advisory Board members are required to file conflict of interest forms. Conflict of Interest Codes, which dictate the types of financial interests that board members must disclose, need to be updated every two years. According to the City Attorney's Office, Conflict of Interest Codes cannot be standardized because they depend on the nature of the Advisory Board's work and the decision-making authority. The City Attorney's Office provides trainings on Conflict of Interest Codes when applicable, and also assists with biennial updates.

In addition, the City Attorney's Office provides legal advice regarding Advisory Boards on behalf of the City to the Mayor's Office, the City Clerk's Office, and City departments/staff liaisons. For example, if consulted, the City Attorney's Office may provide a legal opinion to an Advisory Board's staff liaison on what is within the board's jurisdiction. However, the City Attorney's Office does not provide advice directly to Advisory Boards or to individual board members.

Role of the City Clerk's Office

The role of the City Clerk's Office in regards to Advisory Boards is to make City Council and Mayoral actions known. These actions may include the creation of a new Advisory Board, the modification of an existing Advisory Board's responsibilities or membership requirements, and appointments to fill Advisory Board positions.

In addition, the City Clerk's Office is responsible for posting scheduled vacancies (expiring terms) and unscheduled vacancies (resignations), maintaining a list of these vacancies, administering Oaths of Office to Advisory Board members, and is involved in the filing of Statements of Economic Interest (Form 700s) for members of certain boards that are required to file.

The City Clerk stated that she often mentions opportunities to serve on Advisory Boards when making presentations to community organizations and other local groups, and people who wish to apply to be a member of an Advisory Board may submit a notice of interest/qualifications application online through the City Clerk's website.⁵ The City Clerk's Office will then forward this information to the Director of Appointments in the Mayor's Office. The City Clerk's Office also maintains a list of "inactive" Advisory Boards, as well as summary sheets explaining why each inactive board was placed on the inactive list.⁶

The City Clerk's Office is also now responsible for creating and updating a matrix of the City's various boards, committees, and commissions, including Advisory Boards.⁷ This is a new responsibility which started in early 2016. The matrix includes various information on each Advisory Board, including the Municipal Code section that governs the board, the appointment process to fill vacant positions and expired terms, the name and contact information for the City staff liaison who provides support to the board, a link to the board's website (if the board has one), the number of vacant positions, and the names of members serving on expired terms and the date their term expired.⁸ The City Clerk's Office updates the matrix and distributes it to the Mayor and the City Council on a quarterly basis.

**Role of City
Departments/Staff
Liaisons**

Although Advisory Boards serve to advise the Mayor and the City Council on certain issues of importance and do not actually direct the work of the City, the subject matter covered by most Advisory Boards typically pertains to a specific City department

⁵ Currently, this notice of interest is labelled as an "application." However, by submitting this form, an interested member of the public is not actually applying to the position, they are providing basic contact information and showing interest. Upon receiving this information, the Director of Appointments will send the interested person a complete application. The City Clerk's Office and the Mayor's Office plan to re-label this form so as to not confuse potential applicants.

⁶ The City Clerk's Office maintains an inactive list to serve as a historical guide for the public to show what Advisory Boards technically exist, but are no longer meeting and why (e.g., all positions are vacant, another board absorbed its responsibilities, or the City Council or the Mayor took action to make the board inactive).

⁷ The City has a wide variety of boards, committees, and commissions, not all of which are listed on the City Clerk's Office's quarterly Boards & Commissions Tracking Matrix. However, all of the City's Advisory Boards—the subject of this report—are included in the matrix.

⁸ As discussed in Finding 1, members may continue to serve after their term has expired until the Mayor and Council reappoint or replace them.

or departments. For example, the Park and Recreation Board serves to advise the Mayor and the City Council on matters relating to the acquisition, development, maintenance, and operation of parks, beaches, playgrounds, and recreational activities, and to review the City's recreational programs. The Parks and Recreation Department is primarily responsible for most of these activities, and stated that it values the board's input because it informs department decisions and provides input from the community.

City departments typically assign staff to serve as liaisons to Advisory Boards and to assist them. While City staff responsibilities vary regarding the assistance provided, staff liaisons generally serve as the City's primary contact with the Advisory Board, provide information on City operations, attend board meetings, assist boards in drafting and posting meeting agendas and minutes, and assist boards in compiling periodic reports for the Mayor and City Council.

Audit Results

Finding 1: The City Can Improve Its Process for Filling Vacant Member Positions and Replacing Members Whose Terms Have Expired

Advisory Boards best serve the City when members can regularly meet to consider agenda items and advise on issues impacting the City. Therefore, it is important for qualified candidates to be quickly identified and appointed to fill vacant positions. In addition, in order to ensure that Advisory Boards draw upon ideas from the City's diverse talent pool of residents, the City should, when possible, act quickly to replace members whose terms have expired.

We found that the City's Advisory Boards currently have a high number of vacancies. In addition, many seated members are serving on expired terms.⁹ Specifically, we found:

- Over half of the 334 member positions on the City's active Advisory Boards were either vacant or filled by members serving on expired terms as of March 2017.
- As of March 2017, according to the City Clerk's list of unscheduled vacancies, 38 Advisory Board positions were vacant. Of these, at least 35 positions (92 percent) had been vacant for more than 45 days, including 21 positions (55 percent) that had been vacant for at least a year.¹⁰
- An additional 158 members were serving on expired terms. Of these, 125 members' terms (79 percent) had been expired for at least 45 days, including 73 members (46 percent) whose terms had been expired for at least a year.
- Although the City Council has the authority to appoint members to positions on Advisory Boards that have been

⁹ As discussed later in this section, State Law and Council Policy allow for Advisory Board members whose terms have expired to continue to serve until a replacement is appointed.

¹⁰ As discussed later in this section, some of these positions have been purposefully left vacant for various reasons. In addition, this does not include some 14 positions that are available on new or reactivated Advisory Boards.

vacant or filled by members serving on expired terms for over 45 days, the City Council generally does not use this authority. As a result, it is primarily the responsibility of one staff member of the Mayor's Office to identify potential appointees for all of these vacancies and expired terms. It is likely very difficult, if not impossible, for a single staff member to coordinate the recruiting and appointment process for the approximately 200 positions currently available.

The high number of vacancies has impacted several City Advisory Boards' ability to meet quorum. When Advisory Boards experience quorum issues, meaning not enough members are available to officially meet and consider agenda items, it can lead to frustration for Advisory Board members and impact the Advisory Board's ability to provide the City with advice on issues of importance. In addition, allowing so many members to remain on Advisory Boards long after their terms have expired may reduce the opportunities other residents have to serve, limiting the range of viewpoints the City hears from regarding important matters.

We found several ways the Mayor's Office, the City Council, the City Clerk's Office, and the Communications Department can improve processes to identify and appoint qualified nominees to Advisory Boards in order to fill vacant positions and replace members serving on expired terms more quickly. These include:

- Current vacancy notices do not inform the City Council of its authority to appoint members to certain positions on Advisory Boards. The City Clerk's Office should improve the way the City Council is notified of this authority by adding a statement on every vacancy or expired term notice, and by adding a list of positions that the City Council may appoint for to the City Clerk's quarterly Boards & Commissions Tracking Matrix.
- Some Advisory Board positions require the Mayor to appoint from nominees submitted by Councilmembers. However, there is currently no recourse if Councilmembers do not provide the Mayor with nominees in a timely manner. Therefore, the City should consider establishing a means for the Mayor to appoint for certain Advisory Board positions if the City Council

does not provide nominations within a specified timeframe.

- There is currently no formally documented procedure or specific timelines for the vetting process. To ensure that appointments to Advisory Boards are made as quickly as possible once a candidate is identified, and to ensure that institutional knowledge is recorded, the Mayor's Office, in consultation with the City Attorney's Office and the Office of the Council President, should develop specific procedures and timelines to complete the vetting process for potential appointees.
- There is currently no standard strategy for advertising available positions to the public beyond the notice of vacancy postings that are required by State Law. The Mayor's Office, in consultation with the City Council, the City Clerk's Office, and the Communications Department, should develop a standard outreach procedure for publicizing vacancies on Advisory Boards.

Current Laws Governing Appointments and Term Limits for Advisory Boards Were Established by Voters in 1969

In 1969, voters approved Proposition J, which made several changes to the City Charter related to Advisory Boards. The ballot language stated that "A high degree of citizen participation in (the City of) San Diego's public affairs has helped us to earn the title of 'All America City.' Proposition J offers several changes to broaden the base of citizen participation, provide greater continuity of service on commissions, advisory boards and committees, and clarify the power to appoint and remove members of these citizen bodies."¹¹

Specific changes made by Proposition J included providing the City Council the authority to appoint members to Advisory Boards if the Mayor does not take action to do so within 45 days of a scheduled or unscheduled vacancy, as well as limiting Advisory Board members to two four-year terms. The ballot language states that these changes were intended to fill vacant positions quickly to "guarantee that essential advisory functions be continuous" and replace members after their term has expired in order to "encourage development of an

¹¹ "All America City" refers to an award that is given out by the National Civic League. The award, given to 10 communities annually since 1949, is intended to recognize efforts to bring the full range of the community together to address critical local issues. The City of San Diego won the award twice, in 1962 and 1968.

increased talent pool that can draw new ideas from every sector of the community.”

We Found that Many Positions on the City's Advisory Boards are Vacant or Filled by Members Serving on Expired Terms

We found that over half of all 334 member positions on the City's active Advisory Boards were either vacant or filled by members serving on expired terms as of March 2017.¹² This included 38 unscheduled vacancies, which occur due to a member's resignation or death, as well as 158 members serving on expired terms.¹³ Under State Law and City Council Policy 000-13, Advisory Board members whose terms have expired can continue to serve until they are reappointed or replaced.¹⁴

In addition, many positions have been vacant or had a member serving on an expired term for an extended period of time. Of the 38 unscheduled vacancies on Advisory Boards posted on the City Clerk's website, 35 (92 percent) had been vacant for over 45 days, with five Advisory Boards having three or more unscheduled vacancies. Of the 158 members serving on expired terms, 125 terms had been expired for at least 45 days, including 73 terms that had been expired for at least a year. **Exhibit 3** summarizes unscheduled vacancies and expired terms on Advisory Boards by the amount of time the position had been vacant or the sitting member's term had been expired.

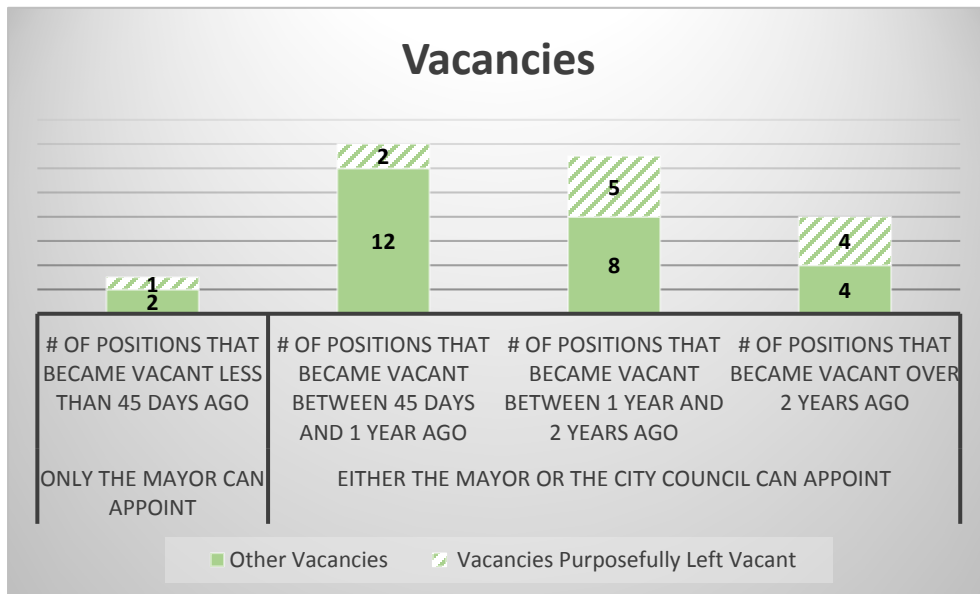
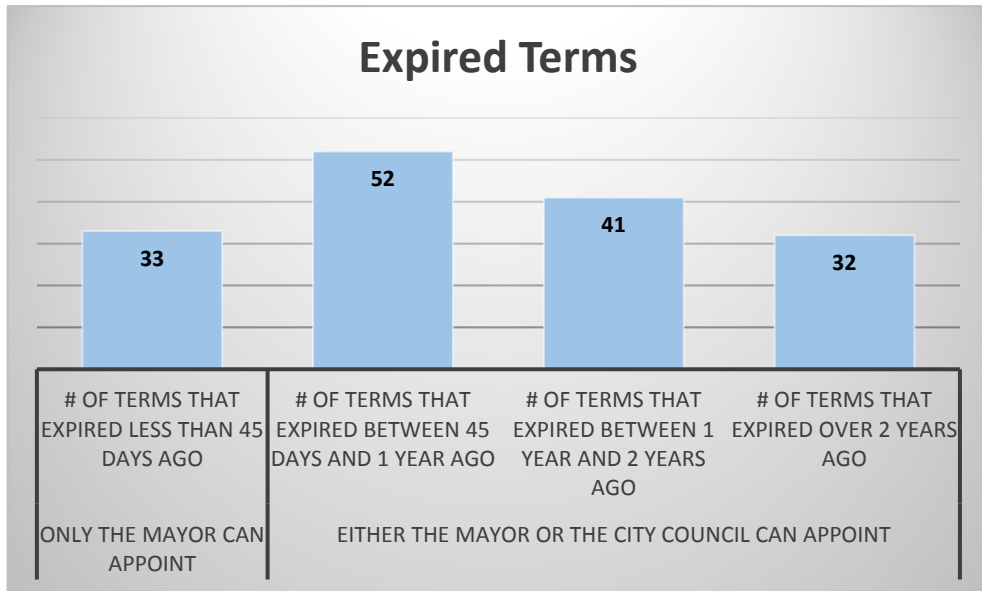
¹² The total 334 member positions includes some positions on new or reactivated Advisory Boards that have yet to be filled and that are not included in the 38 unscheduled vacancies.

¹³ According to the City Clerk's quarterly Boards & Commissions Tracking Matrix, there were actually 52 vacant positions on the City's active Advisory Boards as of March 2017. However, some of these positions are on new Advisory Boards that have yet to be filled. We therefore limited our analysis to the 38 unscheduled vacancies on existing Advisory Boards, as reported on the City Clerk's website.

¹⁴ California Government Code Section 1302 states that public officers shall continue to serve on an expired term until their successor has been appointed.

Exhibit 3:

Many Positions Have Been Vacant or Filled by Members Serving on Expired Terms for Well Over 45 Days



Source: OCA, based on data from the City Clerk's quarterly Boards & Commissions Tracking Matrix, as of March 2017.

High Numbers of Vacancies and Members Serving On Expired Terms Has Prevented Some Advisory Boards from Completing Their Work and Has Limited Opportunities for Additional Residents to Participate in Civic Affairs

The high number of vacancies can impact the ability of Advisory Boards to carry out their role of advising the City on civic issues. In order to hold a meeting, an Advisory Board must have a "quorum," which is the minimum number of members needed to be present to pass an item. According to the City Attorney's Office, typically, this is a simple majority of the number of total positions (occupied or vacant) on the Advisory Board. For example, an Advisory Board with nine total positions would need at least five members to be present in order to hold a meeting, regardless of how many positions on the board are currently occupied. When some of an Advisory Board's positions are vacant, it makes it more difficult, or even impossible to reach a quorum, preventing the Advisory Board from meeting and providing advice to the City.

We found that at least 11 Advisory Boards appeared to experience or be at risk of experiencing quorum issues in 2016. For example, the Consolidated Plan Advisory Board (CPAB), which advises the City on how to expend approximately \$10 million per year in various grant funds the City receives for affordable housing and economic development programs, had three vacant positions during 2016, one of which had been vacant for seven months.¹⁵ As a result, CPAB was not able to meet quorum requirements at 5 of its 12 meetings in 2016.

Another Advisory Board that appeared to experience quorum issues due to vacancies was the Citizens' Equal Opportunity Commission (CEOC), which monitors and evaluates the City's efforts to enhance diversity, ensure fairness in the expenditure of taxpayer dollars, and enforce equal opportunity laws. Quorum and member vacancy issues contributed to several meeting cancellations in 2016. As of March 2017, all member positions of CEOC were either vacant or filled by members serving on expired terms. CEOC had four vacancies during 2016, three of which had been vacant since the Summer of 2014 and the Summer of 2015.¹⁶

¹⁵ As discussed later in this section, some Advisory Boards, such as the Consolidated Plan Advisory Board, require the Mayor to appoint from nominees submitted by Councilmembers. According to the Mayor's Office, the process to fill two vacancies was held up because it took an extended period of time to receive the nominations. However, a nomination was received for a third position seven months before the appointment was made.

¹⁶ According to the Mayor's Office, these positions were held vacant until January 2017 because Municipal Code changes to CEOC's membership were being completed. However, these positions were still vacant as of March 2017.

Furthermore, more than half of all sitting Advisory Board members are serving on expired terms, and approximately 83 percent of Advisory Boards had at least one member serving on an expired term as of March 2017. The high number of members serving on expired terms is not consistent with Proposition J voters' intent to impose term limits and encourage participation from a broader range of community members.

**Multiple Factors
Contribute to the High
Number of Vacant
Advisory Board Positions
and Members Serving on
Expired Terms**

According to the Mayor's Office and the City Attorney's Office, the number of vacancies and members serving on expired terms is high for several reasons. First, some positions can be hard to fill depending on the Advisory Board's subject matter and membership requirements. In addition, according to the Mayor's Office, positions on a small number of boards have been purposefully left vacant while the Mayor's Office completes its review of current Advisory Boards for consolidation and reorganization.

Furthermore, the Mayor's Office stated that the process to fill some scheduled vacancies (expired terms) may be put on hold for a few reasons. For example, if the member serving on an expired term is in the process of completing a project or is serving as chair of the Advisory Board, the process to fill that member's position may be put on hold. The process to fill a vacancy may also be put on hold if necessary updates need to be made to the City's Municipal Code. Lastly, City Council staff stated that since it can be difficult to fill some Advisory Board positions, it is often beneficial to keep people serving on expired terms who may be very qualified and a good fit for their corresponding Advisory Board. This is allowed by both State Law and Council Policy 000-13 in order to allow Advisory Boards to continue their business until members on expired terms can be reappointed or replaced.¹⁷

¹⁷ California Government Code Section 1302 states that public officers shall continue to serve on an expired term until their successor has been appointed.

The City Can Take Steps to Fill Vacant Advisory Board Positions and Replace Members Serving on Expired Terms More Quickly

While certain Advisory Board positions may be difficult to fill and there may be good reason to allow some members to continue to serve for a period of time after their term has expired, we found that the current high number of vacant positions and members serving on expired terms may also be a result of several factors. Specifically, a lack of clarity regarding the City Council's ability to appoint Advisory Board members if the Mayor has not taken action to do so within 45 days; a lack of recourse if Councilmembers do not provide nominees to the Mayor's Office in a timely manner; a lack of a documented procedure, responsibilities, and timelines to complete the vetting process; and a lack of a standard outreach strategy to publicize available positions; may all be contributing factors. As discussed below, addressing these issues can potentially help the City identify candidates, complete the vetting process, and fill available Advisory Board positions more quickly, thereby reducing quorum issues and providing additional residents the opportunity to participate in City affairs.

The City Council Can Appoint Advisory Board Members Directly if the Mayor Has Not Taken Action to Do So Within 45 Days

In 1969, voter approval of Proposition J created City Charter Section 43(c), which gives the City Council authority to fill vacant positions on Advisory Boards after the positions have been vacant for 45 days and the Mayor has not taken action to appoint.¹⁸ Therefore, as of March 2017, City Council could potentially appoint members to at least 35 vacant positions and more than 100 positions filled by members serving on expired terms.¹⁹

However, because the City Council does not generally use this authority, the responsibility for finding qualified candidates has fallen primarily on the Mayor's Director of Appointments.²⁰

¹⁸ City Charter Section 43(c) states: "Whenever the Mayor is vested with authority to appoint the members of boards or committees and does not take such action within 45 days after the board or committee has been established or a vacancy occurs, then the Council shall make such appointments." According to the City Attorney, this language is directory rather than mandatory. This means that the City Council can exercise its authority to appoint after 45 days, but the Mayor can still make an appointment after 45 days as well.

¹⁹ As noted earlier in this section, the Director of Appointments has put the process to fill some vacancies on hold for various reasons. Therefore, some of the positions that have been vacant for over 45 days may have remained vacant on purpose.

²⁰ According to multiple City staff, the last time the City Council used the 45-day rule to appoint members to vacant Advisory Board positions was during late 2013 and early 2014, when the Mayor resigned and the Council President served as the Interim Mayor until a new Mayor could be elected. During that time, one of the Interim Mayor's goals was to ensure that boards were fully appointed. Because the Interim Mayor only acquired certain

Although the Director of Appointments does reach out to Council Offices for help in finding qualified candidates for some Advisory Board positions, it is likely very difficult, if not impossible, for a single staff member to coordinate the recruiting and appointment process for the approximately 200 positions currently available.

The City Council May Not Be Well Informed of Its Appointment Authority for Advisory Board Positions

It is ultimately up to the City Council to exercise its Charter Section 43(c) appointment authority. City Council staff and the Mayor's Office stated that the City Council may not use this authority often because there is currently a positive, collaborative relationship between the current Mayor and the City Council. However, we found that the City Council may not be adequately informed of its authority to appoint members to Advisory Boards after 45 days of the Mayor not taking action to appoint. We also found that it would be difficult for Councilmembers and their staff to determine exactly which positions the City Council can appoint for. For example, we found that:

- The current vacancy notice sent to the City Council does not inform Councilmembers of their Charter Section 43(c) appointment authority;
- Vacancy notices do not state when the 45-day time period will end, and there is no follow-up at the 45-day mark; and
- Although information regarding the dates on which members' terms expired and the number of vacancies on each Advisory Board is included on the City Clerk's quarterly Boards & Commissions Tracking Matrix, the matrix does not include a comprehensive list of which positions have passed the 45-day mark and could potentially be appointed by the City Council.

As a result, some Council staff we spoke with were unaware that the City Council could appoint Advisory Board members if the Mayor had not taken action to appoint within 45 days. They were also unsure of the process the City Council would use to make an appointment. This likely contributes to the fact that

Mayoral powers, which did not include the power to appoint Advisory Board members, the Council's power to appoint after 45 days was used instead. See **Appendix D** for a memorandum from the City Attorney's Office on this subject.

the City Council has not used its Charter Section 43(c) authority in the past several years.

As noted above, it can be difficult to identify qualified candidates for some Advisory Boards, contributing to the current high rate of vacancies and expired terms. Improving the City Council's awareness of the 45-day rule and the positions it has the authority to appoint for, and clarifying the process for the City Council to vet and appoint Advisory Board members, may help leverage the City Council's staff resources and familiarity with their communities to identify qualified Advisory Board candidates more quickly and effectively. In addition, we found that in some cases of appointments that required nomination by Councilmembers, once the Councilmember submitted a nominee to the Mayor's Office, it took the Mayor's Office an extended period of time to make the appointment.²¹ In these cases, the City Council could have potentially made the appointments faster by using its authority.

In order to quickly identify and appoint members to vacant positions and replace members serving on expired terms, we recommend:

Recommendation #1

The City Clerk's Office, upon consultation with the City Attorney's Office, should develop and document a process on how to calculate the 45-day period specified in City Charter Section 43(c) for both unscheduled vacancies and expired terms, as well as which boards the rule applies to. (Priority 2)

Recommendation #2

The City Clerk's Office should notify the City Council of its authority to appoint after 45 days of the Mayor not taking action to appoint by including a statement on this authority on every notification of unscheduled vacancy or expiring terms sent to City Council Offices, when Charter Section 43(c) applies to the available position. These notifications should also include a projected date on which the vacancy may reach the 45-day mark if the Mayor does not take action to appoint someone to the position. (Priority 2)

²¹ According to the Mayor's Office, if an Advisory Board that requires the Mayor to appoint from nominees submitted by Councilmembers has multiple vacancies, the Mayor's Office will wait until nominees for all available positions have been submitted so that all of the appointments can be made as the same time.

Recommendation #3

The City Clerk's Office should include a column showing the 45-day date of all vacancies on its Boards & Commissions Tracking Matrix, which is provided to Council Offices on a quarterly basis. (Priority 3)

There Is Currently No Recourse if the City Council Does Not Provide the Mayor with Nominees for Certain Advisory Board Positions in a Timely Manner

The Mayor's Office and the City Administration brought to our attention that for certain Advisory Board positions, the Municipal Code stipulates that the Mayor can only appoint from nominees submitted by City Councilmembers. For example, the Municipal Code section regarding the Citizens' Advisory Board on Police/Community Relations requires the Mayor to select some appointees from a pool of nominations submitted by each Councilmember.

However, the Municipal Code does not include a deadline for Councilmembers to provide a nominee, and if Councilmembers do not provide a nominee, the position must remain vacant, even if the Mayor has identified a qualified candidate.²²

According to the Mayor's Office and the City Administration, this is the cause of several current vacancies. For example, we found that two seats on the Consolidated Plan Advisory Board were vacant for over 45 days, but were filled shortly after the Mayor received the required nominations from Councilmembers.

This situation could be avoided if the Municipal Code were amended to provide deadlines for Councilmembers to provide nominees, after which the Mayor could make an appointment even if Councilmembers had not provided a nominee. In this situation, an appointee would still be required to have the qualifications required of the position, and the City Council would still need to confirm the appointment.

In order to allow some appointments to be made more quickly, while also preserving the City Council's role of approving the Mayor's appointees to Advisory Boards, we recommend:

²² According to the Mayor's Office and the Administration, this also creates the potential for Councilmembers to intentionally delay providing nominees until the 45 days has passed, in order to appoint without the Mayor's approval. While this is a legitimate concern, our review did not indicate that this is currently happening because the Council generally does not use its authority to appoint. For example, we found that 160 positions on Advisory Boards have been vacant or terms expired for over 45 days, of those, 94 have been vacant or terms expired for over a year.

Recommendation #4

The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, should consider a proposal to amend the Municipal Code regarding appointments to Advisory Boards that require the Mayor to appoint only from nominees provided by the City Council. The amendment should include a deadline for Councilmembers to provide nominees to the Mayor after a vacancy has occurred, after which time the Mayor may name an appointee even if the Council has not provided a nominee. The appointee should still be required to meet all other qualifications required for the Advisory Board position, and be confirmed by the City Council. (Priority 2)

The Candidate Vetting Process Often Takes an Extended Period of Time and Is Not Well Documented

The City's current lack of a procedure documenting the process, responsibilities, and timelines for completing the vetting process also appears to cause some vacancies and expired terms to persist longer than necessary. According to some City Council staff, some Advisory Board liaisons, and an Advisory Board chair, once a potential nominee is submitted to the Mayor's Office, the process to appoint the nominee can be lengthy. In addition, City Council staff and an Advisory Board chair stated that they have had to follow-up with the Mayor's Office multiple times on the status of various nominees' appointments. In at least one case, we were told that a nominee submitted by a Councilmember took over 18 months to be appointed by the Mayor.

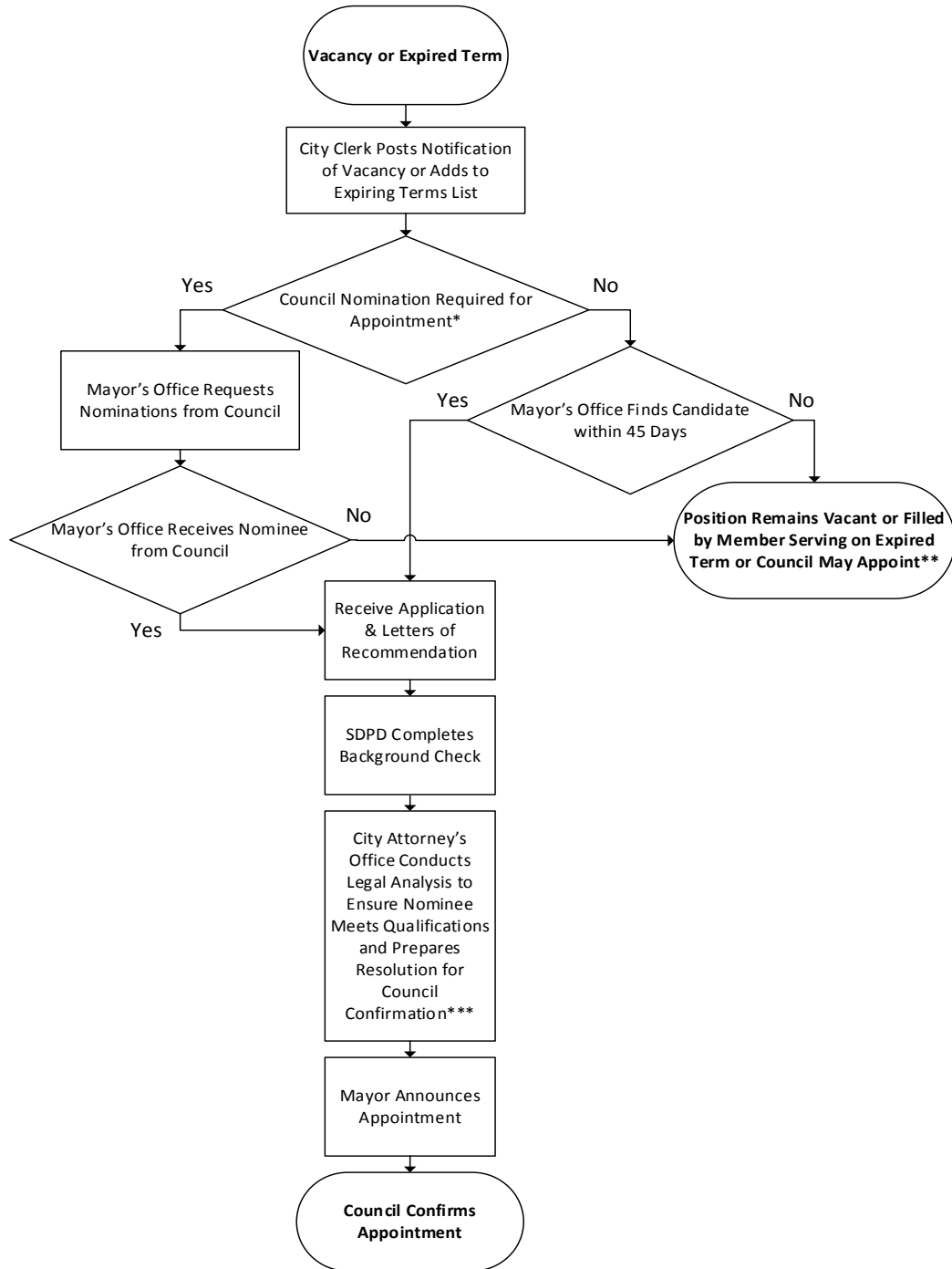
As noted above, there is currently only one staff member of the Mayor's Office who is responsible for overseeing the appointment process, in addition to performing other duties. The vetting process involves the Mayor's Office, which collects information from potential candidates, such as letters of recommendation, and determines if they would be a good fit for the Advisory Board; the San Diego Police Department (SDPD), which performs a background check; and the City Attorney's Office, which verifies that the candidate meets certain eligibility requirements of the Advisory Board, such as possessing specialized knowledge; and the City Council, which must confirm the appointment.

With only one person responsible for identifying candidates and overseeing the vetting process, the time needed to appoint a nominee can be substantial. According to the

Mayor's Office, the process to fill a vacancy can vary in amount of time depending on the Advisory Board and various other factors including the response time of the individual nominated, the amount of time it takes SDPD to complete the background check, the amount of time it takes the City Attorney's Office to ensure the nominee meets the qualifications, when the Director of Appointments can meet with the Mayor, and when the City Council can confirm the appointment. This process can take months. A flowchart of the appointment process is displayed in **Exhibit 4**.

Exhibit 4:

The Appointment and Vetting Process for Advisory Boards



*For re-appointments, because the candidate has already been vetted, the process skips to the Mayor's announcement and the City Council's confirmation.

**The City Council may appoint if the Mayor's Office has not taken action to do so within 45 days of an unscheduled vacancy or a term expiration. According to the City Attorney's Office, if the City Council exercises its authority to appoint, the remaining steps of the process, such as the application, background check, etc., would remain the same. However, the City Council rarely uses this authority.

***According to the City Attorney's Office, this step is sometimes completed after the Mayor announces the appointment.

Source: OCA, based on interviews with the Mayor's Office, the City Attorney's Office, and the City Clerk's Office, and documents provided by the Director of Appointments.

The City Should Document the Vetting Process to Formalize Responsibilities and Establish Timelines in Order to Allow Appointments to Proceed More Quickly

Formally documenting roles and responsibilities in detailed, written policies and procedures helps ensure clarity, timeliness, and accountability.²³ While the current policy governing the appointment process for Advisory Boards does provide guidance on the appointment process itself, it does not establish a process or responsibilities for vetting, and does not include timelines or deadlines for each vetting phase.²⁴ Furthermore, the current process used by the Mayor's Office is only documented internally based on institutional knowledge, and does not include timelines or deadlines for each phase.

As a result, there are no clear expectations for how quickly the vetting should be completed. In addition, City Council staff seemed unsure what steps had to be undertaken during the vetting process, how long each step should take, or how the City Council would vet potential appointees if the City Council were to use its authority to appoint. According to the City Attorney's Office, the process would be the same as the one used by the Mayor's Office. However, according to Council staff, a formal written process would be helpful since the City Council does not typically make these appointments.

In order to set timeline expectations for the vetting process, formally establish responsibilities for various steps of the vetting process, and clarify how the vetting process should be conducted in the event the City Council makes an appointment to an Advisory Board, we recommend:

Recommendation #5

The Mayor's Office, in consultation with the Office of the Council President, should revise Council Policy 000-13, "Procedure for Mayor and Council Appointments," to formally document required steps in the vetting process for Advisory Board candidates, including establishing responsibilities for completing each step and timelines for completion. The revised policy should address differences, if any, between the vetting processes for candidates to be appointed by the Mayor versus candidates to be appointed by the City Council. (Priority 2)

²³ The U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*, known as the "Green Book," emphasizes the importance of formally documenting roles and responsibilities in detailed written policies and procedures.

²⁴ The policy governing the appointment process is Council Policy 000-13.

The City Lacks a Comprehensive Outreach Strategy for Publicizing Available Advisory Board Positions

The City has limited resources available to recruit qualified Advisory Board candidates. Therefore, leveraging available resources to the maximum extent possible is critical to identifying candidates for filling the more than 200 positions currently available. The City Clerk's Office currently posts notifications of vacancies in compliance with State Law, and the Mayor's Director of Appointments, the City Clerk, and the City Council and Council staff do conduct some outreach to try to generate interest and recruit candidates. However, we found that the City currently lacks a standard, comprehensive outreach strategy for publicizing available Advisory Board positions. Therefore, there may be opportunities for the City to increase the public's awareness of available positions and thereby increase the public's involvement in City Advisory Boards.

The City complies with State Law requirements to post notices of unscheduled vacancies, which occur either due to member resignation or death, on the City Clerk's website and on the 12th floor of the City Administration Building (City Hall).²⁵ The City also complies with State Law requirements to annually post a list of scheduled vacancies, which occur when a member's term expires.²⁶ The City Clerk's website includes links to a list of unscheduled vacancies and a list of upcoming expiring terms (scheduled vacancies). On the list of expiring terms, the City Clerk's Office includes the terms that will expire in the next 13–15 months rather than just the next calendar year and updates the list on a monthly basis, thus going beyond the legal requirement.

The Mayor's Director of Appointments and the City Clerk also stated that they give many presentations and attend many community gatherings throughout the year in order to assist with recruitment. As part of these presentations, the City Clerk informs interested members of the public to first look at their own skill set and figure out which Advisory Boards might fit their skill set. Interested applicants can then view the webpage

²⁵ State Law (CA Government Code Section 54974) requires the City to post notices of unscheduled vacancies on the City Clerk's website and in City Hall. This State Law also requires the City to send notices of unscheduled vacancies to the public library with the largest service population within the City.

²⁶ State Law (CA Government Code Section 54972) requires the City to annually post a list of scheduled vacancies. This State Law also requires the City to send the list of scheduled vacancies to the public library with the largest service population within the City.

on that Advisory Board on the City Clerk's website and get further information regarding necessary requirements and vacant positions. Additionally, vacancy notices are sent to the City Council so that Councilmembers and their staff may assist in recruiting efforts and provide potential nominees.²⁷

A Standard, Comprehensive Outreach Strategy Is Needed to Help the Mayor's Office, the City Clerk, and the City Council Recruit Qualified Candidates for Advisory Boards

All of the above efforts are critical to recruiting qualified candidates for Advisory Board positions. However, because the City currently lacks a comprehensive standard outreach strategy for available Advisory Board positions, the City may be missing opportunities to reach community members who may be well qualified and interested in filling an Advisory Board position.

The City may be able to increase public awareness and interest in vacant positions by utilizing additional means for advertising vacant positions to the public as part of a standard outreach strategy. Multiple City staff and an Advisory Board chair expressed concern that the City does not do enough outreach to advertise vacancies to the public. For example, the Communications Department, which provides strategic public relations and creative services to City departments, is not involved in publicizing Advisory Board opportunities.

Therefore, the City should leverage the expertise of the Communications Department to help the Mayor's Office, the City Clerk's Office, and the City Council develop a systematic process to more widely publicize vacant positions. There are many low-cost strategies that the Communications Department could help develop and evaluate. For instance, as part of a standard outreach process, each time an Advisory Board position becomes available, the Communications Department could assist the Mayor's Office, the City Clerk's Office, and the City Council with broadcasting current vacancies on social media. This could include customizing the broadcast to reach people most likely to be interested in the position being advertised, such as through the use of hashtags when the position is advertised on Twitter.

²⁷ As noted above, some Advisory Board positions require the nomination to be provided by a Councilmember.

In order to make the best use of the City's available resources and to better inform the public of vacant Advisory Board positions and positions for which terms have expired, we recommend:

Recommendation #6

The Mayor's Office, in conjunction with the Office of the Council President, the City Clerk's Office, and the Communications Department, should develop and document a standard strategy for publicizing Advisory Board vacancies and positions for which terms have expired. (Priority 3)

Finding 2: The City Should Provide Additional Training and Resources to Help Advisory Boards Comply with California's Open Meeting Law and to Help Increase Transparency and Public Participation

The purpose of the City's Advisory Boards is to provide the public with the opportunity to volunteer their services and provide the City with valuable advice on significant matters. Members of the public who do not serve as seated members of Advisory Boards may also have an interest in the subject matters of and actions taken by Advisory Boards. Therefore, it is important for the City's Advisory Boards to be transparent and to conduct their meetings openly.

All Advisory Boards are required to comply with the Brown Act, California's open meeting law.²⁸ The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies, such as the City's Advisory Boards. In addition to Brown Act compliance, it is important for Advisory Boards to be transparent to promote public participation.

We found that the City can take additional action to advise Advisory Board members on how to comply with the Brown Act and can help ensure that Advisory Boards are transparent. Specifically, we found:

- Although compliance with the Brown Act is the responsibility of the seated members of Advisory Boards, these members are volunteers and may not be fully aware of the Brown Act requirements. However, there is no current requirement for all Advisory Board members to receive training on the Brown Act.
- Advisory Boards can increase transparency and promote public participation by posting agendas and meeting minutes online. Although many Advisory Boards currently do so, we found that the City has not provided all Advisory Boards with websites on which to post this information. There is also no standard process for posting agendas, minutes, and other key documents online.

²⁸ The Ralph M. Brown Act (Brown Act) is California Government Code Sections 54950–54963.

As a result, Advisory Boards risk violating the Brown Act, and may not be sufficiently transparent to promote public participation. The City may be able to help ensure compliance with the Brown Act by providing additional training and guidance to Advisory Board members. Therefore, we recommend that the Communications Department work with the City Attorney's Office to develop a training video, and the City Administration provide live trainings on a periodic basis open to all Advisory Board members. We recommend the City require all members to watch the training video within their first 30 days of serving on an Advisory Board and re-watch the training video every two years. We also recommend the City require staff liaisons to attend the live training at least once per year. In addition, we recommend that the City provide all Advisory Boards with a website, or with access to a designated page on the City's website, on which they can post meeting agendas and minutes, as well as develop a standard document for Brown Act compliance including procedures and responsibilities for posting meeting agendas and minutes online.

**Advisory Boards are
Required to Comply with
the Brown Act**

All Advisory Boards are required to comply with the Brown Act, California's open meeting law. The Brown Act states that public boards and commissions in the State of California exist to aid in the conduct of the people's business. It is therefore the intent of the Brown Act that the actions and deliberations of public boards and commissions be taken and conducted openly. Any congregation of a majority of the members of an Advisory Board at the same time and place to hear, discuss, or deliberate on any item that is within the subject matter jurisdiction of the Advisory Board, constitutes a meeting.

Key Brown Act requirements include:

- Meetings must be open to the public, be held on a regular schedule, and be conducted in accordance with an agenda available in advance of the meeting;
- Agendas for regular meetings should be posted 72 hours in advance in a location that is freely accessible to the public;
- The public has the right to attend meetings;

- The public may comment on any matter within the Advisory Board's subject matter jurisdiction at regular meetings;
- Closed sessions are limited to specific purposes authorized in the Brown Act;
- The Advisory Board cannot take action by secret ballot; and
- Serial meetings are not allowed.²⁹

According to the City Attorney's Office, it is the responsibility of the members of Advisory Boards to comply with the Brown Act requirements. If an Advisory Board violates the Brown Act, any interested party or the District Attorney may bring a civil action to invalidate an action taken by the Advisory Board.

The City Does Not Require Advisory Board Members to Receive Brown Act Training, Creating a Risk of Noncompliance, Which May Result in Invalidation of an Advisory Board's Actions

Given that actions taken by an Advisory Board may be invalidated by civil action if the Advisory Board violates the Brown Act, it is important for the City to provide sufficient guidance and training to Advisory Board members on how to comply. According to the City Attorney's Office, ultimately, it is the responsibility of the seated members of each board to comply with the Brown Act requirements. However, because board members are members of the public that are volunteering their service to the City, they may not be fully aware of the Brown Act requirements.

We found that there is no current requirement for all Advisory Board members to receive training on the Brown Act. In order to provide Advisory Board members with the information they need to comply with the Brown Act, the City should take responsibility to provide training to all members on a regular basis and upon a new member's appointment. However, due to limited staff resources, the City Attorney's Office is currently unable to provide individual Brown Act training to all Advisory Boards. According to the City Attorney's Office, it provides Brown Act training to individual Advisory Boards upon the request of the Advisory Board or the board's staff liaison. In addition, the City Attorney's Office plans to, with assistance

²⁹ This means that a majority of the members shall not, outside a meeting authorized by the Brown Act, 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 Advisory Board. For example, a majority cannot email each other to discuss topics that are within the subject matter of the board.

from the Communications Department, develop a training video that will be made available to all City Advisory Boards.

The City Should Assume Additional Responsibility for Training Advisory Board Members on How to Comply with the Brown Act

We recommend the Communications Department work with the City Attorney's Office to develop a training video and the City require the staff liaisons for each Advisory Board to ensure that all members watch the video within 30 days of becoming a new board member, and again every two years. All members should sign an attestation to confirm that they viewed the video. A live training is also beneficial because Advisory Board members and staff liaisons can have the opportunity to ask questions. Therefore, the City Administration should hold periodic live Brown Act trainings open to all Advisory Board members. This could be held in a similar format as the Ethics training the City's Ethic Commission provides to all employees once every two years. All staff liaisons for Advisory Boards should be required to attend this training on a yearly basis.

Many Advisory Boards Do Not Consistently Post Agendas and Minutes Online, Reducing Transparency and Public Participation

The transparency of some of the City's Advisory Boards is limited because they do not post meeting agendas and minutes online. Although the Brown Act does not specifically require Advisory Boards to post their agendas online, doing so would help increase transparency and promote public participation. The Brown Act only requires Advisory Boards to post agendas in hard copy in a location that is freely accessible to the public. Advisory Boards may fulfill this requirement by posting hard copy agendas in a box outside of the City Administration Building. The box is shown in **Exhibit 5**. While the box may be a useful place to post for people that do not have internet access, it is not reasonable to expect all interested members of the public to travel downtown to view agendas.

Furthermore, if Advisory Boards are not adequately publicizing their activities, it likely reduces public participation in addition to transparency. For some of the Advisory Boards that do not post meeting agendas and minutes online, we were unable to determine when and where meetings are held. Thus, not posting agendas online is likely impacting public participation for some Advisory Boards.

Exhibit 5:

Agenda Box Outside of the City Administration Building



Source: OCA photo.

The City Can Increase Transparency and Promote Public Participation by Ensuring All Advisory Boards Have Websites to Post Meeting Agendas and Minutes Online

The City's public website is a convenient and accessible location for internet users to view City information such as Advisory Board agendas and minutes. However, there is no uniform procedure to ensure that all Advisory Boards have a website or have access to a designated page on the City's website on which to post meeting agendas, minutes, and other key documents online.

Because not all Advisory Boards have their own website, agendas for some meetings are only posted in hard copy outside the City Administration Building. While the City Clerk's website currently has a link for each Advisory Board that provides information about the board, including a link to its website (if the Advisory Board has one) and governing documents, no meeting agendas or minutes are posted directly on these webpages. Meeting agendas and minutes are only posted online when the Advisory Board has an additional website. We therefore recommend that the City provide each Advisory Board with a website, or with access to a designated page on the City's website, and establish procedures and responsibilities for posting meeting agendas and minutes online, in addition to posting the agendas in hard copy outside the City Administration Building.

In order to promote compliance with legal requirements, increase transparency, and improve public awareness and participation in Advisory Boards, we recommend:

Recommendation #7

The Communications Department should work with the City Attorney's Office to develop a training video for the Brown Act, and the City Administration should require all Advisory Board members to watch the video on a biennial basis.

- The staff liaisons for each Advisory Board should be responsible for ensuring that all board members view the training video within their first 30 days of serving on the Advisory Board and again every two years. The staff liaisons should develop a process to ensure that all board members sign an attestation confirming that they viewed the video. (Priority 2)

Recommendation #8

The City Administration, in consultation with the City Attorney's Office, should provide a live Brown Act training for all Advisory Board members on a periodic basis, and should ensure that the staff liaisons for the boards attend this live training at least once per year. (Priority 2)

Recommendation #9

The City Administration should develop or procure a standard Brown Act compliance document, as approved by the City Attorney's Office, and provide it to all new and existing Advisory Boards. This standard should be posted on the City's website. In addition, the City Administration should ensure that each Advisory Board is provided with a website or with access to a designated page on the City's website, and document procedures and responsibilities for posting meeting agendas, minutes, and other applicable documents online. (Priority 2)

Finding 3: The City Can Take Additional Steps to Ensure that the Organization and Categorization of Advisory Boards Mitigates the Risk of Unnecessary Overlap, and that All Existing Advisory Boards Serve a Valuable Purpose for the City

To maximize the efficiency of the City's Advisory Boards, they should be organized in a way that prevents unnecessary overlap and inefficient use of City resources. In addition, because the City's Advisory Boards were created to provide the City with valuable insight on various subjects, the City Council should be well-informed of each Advisory Board's mission, annual actions, and areas of concern, including whether the board is suffering from quorum issues or having trouble filling vacancies. This information would enable the City Council to take action on areas of interest to Advisory Boards, such as taking up board initiatives, consolidating boards with overlapping responsibilities or sunsetting obsolete boards, and revising board membership requirements for seats that have been difficult to fill.

City staff notified us that there are issues with overlap between some Advisory Boards, some Advisory Boards may have overly restrictive membership requirements that make it difficult to find qualified candidates, and some Advisory Boards may have outlived their usefulness to the City. Although the Mayor's Office is taking action to review existing City Advisory Boards and address these issues on a one-time basis, we found that the City can take additional steps to ensure that the issues addressed by the Mayor's Office's review do not reoccur. Specifically, we found:

- There is currently no standardized, formal process to review proposed new Advisory Boards to determine whether they can be folded into existing Advisory Boards or to analyze their expected cost to the City, thus creating the potential for overlap and inefficiency.
- Not all Advisory Boards currently have a requirement to report to the City Council, and there is no mechanism to hold boards with reporting requirements accountable for meeting this obligation. Therefore, the City Council does

not regularly receive information on all Advisory Boards' missions, activities, and challenges.

- The City does not have a formal, periodic review process to determine whether permanent Advisory Boards continue to be useful, and some Advisory Boards that may have outlived their usefulness continue to operate.

As a result, there is a possibility of current organization issues reoccurring and of the City Council not being well-informed of the activities of all Advisory Boards and any issues they may be facing. We therefore recommend that the City develop a standard review process for proposed new Advisory Boards, develop a standard report template and require each Advisory Board to submit this report to the City Council on an annual basis, track compliance with this reporting requirement, and develop and implement a formal periodic review process of all Advisory Boards.

We Found Some Organization and Standardization Issues Exist with Current City Advisory Boards, Creating Stakeholder Confusion and Causing Unnecessary Work for City Staff

According to several City staff, many current Advisory Boards cover overlapping issues. When various issues are being discussed by multiple boards, it creates extra work for City staff and may create confusion for stakeholders.

In addition, some inactive Advisory Boards that were created as permanent Advisory Boards no longer meet, but have not been officially dissolved due to their permanent establishment in the Municipal Code. Furthermore, some current Advisory Boards have experienced persistent quorum issues, trouble filling vacancies, or have not been able to meet for some time. In some cases, these are Advisory Boards that may no longer serve a valuable purpose to the City, although a decision to sunset them has not been made by the City Council.

The Mayor's Office is Reviewing Existing City Advisory Boards for Reorganization and Standardization

In response to a request from former Council President Lightner's office, and to address some of the issues outlined above, the Mayor's Office is working on a reorganization of Advisory Boards. The Director of Appointments shared with us the following summary of steps:

1. The boards and commissions under the purview of the City of San Diego will be analyzed for proper categorization. Categories may include:
 - Appointment Authority;
 - Responsible Department; and
 - Function.
2. A recommendation regarding the organization of boards and commissions will be developed. Recommendations may include:
 - Reorganization of boards and commissions;
 - Consolidation of boards and commissions; and
 - Sunsetting of boards and commissions.
3. A recommendation for standardization of the management by city staff of boards and commissions will be developed. Recommendations may include:
 - Further standardization of onboarding procedures;
 - Standardization of bylaws development;
 - Standardization of day to day administrative support; and
 - Development of calendar of reporting to designated City Council committee or City Council.
4. Key stakeholders to be included in development of aforementioned steps:
 - Mayor's Office Policy Directors;
 - City Attorney's Office;
 - Assistant Chief Operating Officer;
 - Deputy Chief Operating Officers;

- Department Directors;
- Board and commission staff liaisons;
- Board and commission Chairs and members;
- Councilmembers; and
- Members of the public.

The Mayor's Office's Review is Critical, But the City Should Take Additional Action to Help Ensure that Organizational Issues Impacting Advisory Boards Do Not Reoccur

The City could benefit from a reorganization and consolidation of some Advisory Boards, and the steps taken by the Mayor's Office are necessary to address ongoing issues with Advisory Boards. Therefore, it is important for the Mayor's Office to follow through with its plan to review the City's current Advisory Boards and make recommendations for reorganization and consolidation. However, these will be a one-time fix. To prevent some of the same issues from reoccurring, the City needs to establish additional procedures.

Prior to the Establishment of Every New Advisory Board, the City Should Analyze Expected Costs and Identify Opportunities to Consolidate to Avoid Potential Overlap

The City does not have a process to formally review proposed new Advisory Boards to determine whether they can be folded into existing Advisory Boards or to analyze their expected cost to the City, thus creating the potential for overlap.

We therefore recommend the Mayor's Office follow through with its planned review, and the City develop a standard procedure for reviewing proposed new Advisory Boards. This can be accomplished by including a standard analysis in each staff report for proposed new Advisory Boards, including a discussion of opportunities to consolidate the new board with an existing one, whether any issues to be covered by the new board are already within the purview of an existing board, and the new board's estimated cost to the City.³⁰

³⁰ The estimated cost to the City should include an estimate of the cost of staffing time to administer the Advisory Board, it should not include an estimate of any additional costs to the City that may result from advice received from the Advisory board.

Many Advisory Boards Do Not Have Reporting Requirements or Do Not Fulfill Them, Limiting the City Council's Ability to Periodically Review Advisory Board Activities

Although the Mayor's Office's review may include recommendations for the sunseting of certain Advisory Boards, the City currently lacks a process to periodically review Advisory Boards in order to address any operational or organizational issues and ensure that each board is still providing a valuable service to the City. Without a plan to conduct periodic reviews, the City may experience the same issues in the future. We found that the City does not have a formal review process to determine whether permanent Advisory Boards continue to be useful.

We also found that the City Council does not regularly receive information on all Advisory Boards' missions, activities, and challenges. Based on the City Clerk's Office's quarterly Boards & Commissions Tracking Matrix, only 15 of the 30 (50 percent) active Advisory Boards have requirements to report to the City Council or the Mayor. In addition, not all of those that do have such requirements are complying with their reporting requirement. For example, the Small Business Advisory Board has a reporting requirement, but according to the City staff liaison for that board, the board has not reported to City Council in at least 10 years. In addition, the Citizens' Equal Opportunity Commission (CEOC) has not met its reporting requirement. The CEOC has a quarterly reporting requirement, but according to the board's chair, has been trying to meet the requirement on an annual basis due to quorum issues. However, CEOC's most recent posted annual report is from 2011.³¹ There is currently no formalized tracking of whether annual reporting requirements have been fulfilled or any recourse for non-compliance.

Standard Annual Reports to City Council May Help Improve the Efficiency and Effectiveness of City Advisory Boards

Given that not all of the Advisory Boards have their own website or reporting requirement, City Council does not have the information necessary to address Advisory Board challenges on an ongoing basis. As a result, overlap between Advisory Boards, quorum issues, overly restrictive requirements, and other challenges may continue to persist. A required annual report to the City Council could help keep the City Council aware of what the Advisory Boards are doing, what

³¹ Although CEOC has not issued any annual reports since 2011, CEOC addressed letters to the Mayor and the City Council in 2012, 2014, and 2015.

their main areas of concerns are, if they have been having quorum issues or problems filling vacant positions, etc.

Annual reports to the City Council could also help increase morale among Advisory Board members by providing them with a more direct opportunity to make an impact on the City by ensuring that the City Council is made aware of the work their board is doing. In addition, this information could help inform the City Council if an individual Advisory Board should be reviewed for consolidation with another Advisory Board or determine whether it continues to be useful. Therefore, we recommend the City develop a standard form-based annual report template and require each Advisory Board to complete and submit this report to the City Council on an annual basis. We also recommend the City establish a method to track compliance with this annual reporting requirement and consider using the annual report as part of a formal periodic review process of Advisory Boards.

In order to maximize the efficiency and effectiveness of the City's Advisory Boards, we recommend:

Recommendation #10

The Mayor's Office should follow through with its planned steps for reviewing the City's Advisory Boards for reorganization and standardization, and present recommendations to the City Council for consideration. (Priority 2)

Recommendation #11

The Mayor's Office should develop a standard format for reports to City Council regarding new Advisory Boards prior to their establishment. This report should include analysis of whether the functions of the proposed board could be incorporated into an existing board. This report should also include estimates of the City staff hours/cost to administer the proposed new Advisory Board. (Priority 2)

Recommendation #12

The Mayor's Office, in coordination with the Office of the Council President, should develop a standard, form-based annual report template and require each Advisory Board to complete and submit this report to the City Council on an annual basis. The form should include:

- The mission and duties of the Advisory Board, as established by the Mayor and City Council, and stated in the Municipal Code;
- A brief summary of the actions taken by the Advisory Board that year;
- The number of Advisory Board meetings held (including the number of meetings cancelled and the reason for any cancellation);
- Whether the Advisory Board has experienced any issues with quorum;
- The number of vacant positions on the Advisory Board;
- The number of members serving on expired terms;
- Any concerns the board would like to bring to City Council's attention; and
- An estimate of the City staff hours/cost to administer the board.

The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, should determine how the requirement that all Advisory Boards complete this report and provide it to the Mayor, the City Council, and the City Clerk's Office on an annual basis, and appear at City Council or Council Committee meetings upon request, can best be implemented. In addition, the City Administration should document a procedure designating each Advisory Board's department liaison as responsible for providing the board's annual report to the Mayor's Office, the City Council, and the City Clerk's Office, once submitted by the Advisory Board. (Priority 2)

Recommendation #13

The City Clerk's Office should document a procedure to update its matrix on an annual basis to account for the annual reports, once received, and note if any reports were not submitted. The matrix should include links to the annual reports and should be sent to City Council. (Priority 3)

Recommendation #14

The Mayor's Office, in coordination with the Office of the Council President, should develop and implement a formal review process/policy for City Advisory Boards. This review of all Advisory Boards should be completed at least once every two years, and should include consideration of the potential to reorganize or consolidate existing Advisory Boards, revise Advisory Board membership requirements to facilitate recruitment, and sunset Advisory Boards that are obsolete or redundant. (Priority 2)

Conclusion

The City of San Diego (City) values a high degree of civic engagement and participation in public decision-making. To that end, the City Council has created numerous Advisory Boards using authority granted by City Charter Section 43(a). Advisory Boards often include members who are passionate about their board's subject matter, and who may be subject-matter experts. Advisory Boards can provide valuable advice and insight to the Mayor, the City Council, and City departments on a wide range of important issues.

As of March 2017, over half of the 334 member positions on the City's Advisory Boards were either vacant or filled by members serving on expired terms. Many of the vacant positions and expired terms had been vacant or expired for a significant amount of time. The vacancies have impacted some boards' ability to meet quorum requirements and provide advice to the Mayor and the City Council. In addition, the high number of Advisory Board positions that are filled by members serving on expired terms may limit opportunities for other residents to serve.

We found several ways that the process to identify qualified candidates can be improved to help fill vacancies and replace members whose terms have expired more quickly. Specifically, these include: improving the process of notifying the City Council of its authority to appoint members to certain Advisory Board positions; consider establishing a means for the Mayor to appoint for certain Advisory Board positions if the City Council does not provide nominations within a specified timeframe; formally documenting the candidate vetting process, including establishing responsibilities for each step and timelines for completion; and developing a standard strategy for publicizing Advisory Board vacancies and positions for which terms have expired.

In addition, we found that some Advisory Board members may not be well-informed of the transparency requirements of the Brown Act (California's open meeting law), and some Advisory Boards have not been provided with websites on which to post meeting agendas, minutes, and other relevant documents. We identified several ways that the City can help increase

compliance with applicable transparency requirements and promote public participation and engagement in Advisory Board activities. Specifically, these include: creating a Brown Act training video and conducting live Brown Act trainings; requiring Advisory Board members to complete Brown Act training upon appointment and again every two years; providing all Advisory Boards with websites, or with access to a designated page on the City's website; and establishing procedures and responsibilities for posting meeting agendas, minutes, and other important documents online.

Finally, City staff reported that some Advisory Boards may not be organized efficiently and effectively. In addition, we found that there is no current requirement for all Advisory Boards to periodically report on their activities to the City Council, and there is no process to periodically review the Advisory Boards to ensure they are providing maximum value to the City. The Mayor's Office is currently reviewing existing Advisory Boards to address some of these issues. In addition to the Mayor's Office's one-time review, we found that the City can take steps to ensure that Advisory Boards are organized efficiently and effectively, and are providing maximum value to the City. Specifically, these include: establishing a process to review proposed new Advisory Boards, including an analysis of whether the new board can be consolidated with an existing Advisory Board, and an analysis of the anticipated costs of administering the new board; requiring all Advisory Boards to submit an annual report detailing the board's mission and accomplishments, as well as any issues of concern, such as quorum issues caused by vacancies; and implementing a formal process to periodically review Advisory Boards.

Recommendations

In order to quickly identify and appoint members to vacant positions and replace members serving on expired terms, we recommend:

- Recommendation #1** The City Clerk's Office, upon consultation with the City Attorney's Office, should develop and document a process on how to calculate the 45-day period specified in City Charter Section 43(c) for both unscheduled vacancies and expired terms, as well as which boards the rule applies to. (Priority 2)
- Recommendation #2** The City Clerk's Office should notify the City Council of its authority to appoint after 45 days of the Mayor not taking action to appoint by including a statement on this authority on every notification of unscheduled vacancy or expiring terms sent to City Council Offices, when Charter Section 43(c) applies to the available position. These notifications should also include a projected date on which the vacancy may reach the 45-day mark if the Mayor does not take action to appoint someone to the position. (Priority 2)
- Recommendation #3** The City Clerk's Office should include a column showing the 45-day date of all vacancies on its Boards & Commissions Tracking Matrix, which is provided to Council Offices on a quarterly basis. (Priority 3)

In order to allow some appointments to be made more quickly, while also preserving the City Council's role of approving the Mayor's appointees to Advisory Boards, we recommend:

- Recommendation #4** The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, should consider a proposal to amend the Municipal Code regarding appointments to Advisory Boards that require the Mayor to appoint only from nominees provided by the City Council. The amendment should include a deadline for Councilmembers to

provide nominees to the Mayor after a vacancy has occurred, after which time the Mayor may name an appointee even if the Council has not provided a nominee. The appointee should still be required to meet all other qualifications required for the Advisory Board position, and be confirmed by the City Council. (Priority 2)

In order to set timeline expectations for the vetting process, formally establish responsibilities for various steps of the vetting process, and clarify how the vetting process should be conducted in the event the City Council makes an appointment to an Advisory Board, we recommend:

Recommendation #5

The Mayor's Office, in consultation with the Office of the Council President, should revise Council Policy 000-13, "Procedure for Mayor and Council Appointments," to formally document required steps in the vetting process for Advisory Board candidates, including establishing responsibilities for completing each step and timelines for completion. The revised policy should address differences, if any, between the vetting processes for candidates to be appointed by the Mayor versus candidates to be appointed by the City Council. (Priority 2)

In order to make the best use of the City's available resources and to better inform the public of vacant Advisory Board positions and positions for which terms have expired, we recommend:

Recommendation #6

The Mayor's Office, in conjunction with the Office of the Council President, the City Clerk's Office, and the Communications Department, should develop and document a standard strategy for publicizing Advisory Board vacancies and positions for which terms have expired. (Priority 3)

In order to promote compliance with legal requirements, increase transparency, and improve public awareness and participation in Advisory Boards, we recommend:

Recommendation #7

The Communications Department should work with the City Attorney's Office to develop a training video for the Brown Act, and the City Administration should require all Advisory Board members to watch the video on a biennial basis.

- The staff liaisons for each Advisory Board should be responsible for ensuring that all board members view the training video within their first 30 days of serving on the Advisory Board and again every two years. The staff liaisons should develop a process to ensure that all board members sign an attestation confirming that they viewed the video. (Priority 2)

Recommendation #8

The City Administration, in consultation with the City Attorney's Office, should provide a live Brown Act training for all Advisory Board members on a periodic basis, and should ensure that the staff liaisons for the boards attend this live training at least once per year. (Priority 2)

Recommendation #9

The City Administration should develop or procure a standard Brown Act compliance document, as approved by the City Attorney's Office, and provide it to all new and existing Advisory Boards. This standard should be posted on the City's website. In addition, the City Administration should ensure that each Advisory Board is provided with a website or with access to a designated page on the City's website, and document procedures and responsibilities for posting meeting agendas, minutes, and other applicable documents online. (Priority 2)

In order to maximize the efficiency and effectiveness of the City's Advisory Boards, we recommend:

Recommendation #10

The Mayor's Office should follow through with its planned steps for reviewing the City's Advisory Boards for reorganization and standardization, and present recommendations to the City Council for consideration. (Priority 2)

Recommendation #11

The Mayor's Office should develop a standard format for reports to City Council regarding new Advisory Boards prior to their establishment. This report should include analysis of

whether the functions of the proposed board could be incorporated into an existing board. This report should also include estimates of the City staff hours/cost to administer the proposed new Advisory Board. (Priority 2)

Recommendation #12

The Mayor's Office, in coordination with the Office of the Council President, should develop a standard, form-based annual report template and require each Advisory Board to complete and submit this report to the City Council on an annual basis. The form should include:

- The mission and duties of the Advisory Board, as established by the Mayor and City Council, and stated in the Municipal Code;
- A brief summary of the actions taken by the Advisory Board that year;
- The number of Advisory Board meetings held (including the number of meetings cancelled and the reason for any cancellation);
- Whether the Advisory Board has experienced any issues with quorum;
- The number of vacant positions on the Advisory Board;
- The number of members serving on expired terms;
- Any concerns the board would like to bring to City Council's attention; and
- An estimate of the City staff hours/cost to administer the board.

The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, should determine how the requirement that all Advisory Boards complete this report and provide it to the Mayor, the City Council, and the City Clerk's Office on an annual basis, and appear at City Council or Council Committee meetings upon request, can best be implemented. In addition, the City Administration should document a procedure designating each Advisory Board's department liaison as responsible for providing the board's annual report to the Mayor's Office, the City Council, and the City Clerk's Office, once submitted by the Advisory Board. (Priority 2)

Recommendation #13

The City Clerk's Office should document a procedure to update its matrix on an annual basis to account for the annual reports, once received, and note if any reports were not submitted. The matrix should include links to the annual reports and should be sent to City Council. (Priority 3)

Recommendation #14

The Mayor's Office, in coordination with the Office of the Council President, should develop and implement a formal review process/policy for City Advisory Boards. This review of all Advisory Boards should be completed at least once every two years, and should include consideration of the potential to reorganize or consolidate existing Advisory Boards, revise Advisory Board membership requirements to facilitate recruitment, and sunset Advisory Boards that are obsolete or redundant. (Priority 2)

Appendix A: Definition of Audit Recommendation Priorities

DEFINITIONS OF PRIORITY 1, 2, AND 3 AUDIT RECOMMENDATIONS

The Office of the City Auditor maintains a priority classification scheme for audit recommendations based on the importance of each recommendation to the City, as described in the table below. While the City Auditor is responsible for providing a priority classification for recommendations, it is the City Administration's responsibility to establish a target date to implement each recommendation taking into considerations its priority. The City Auditor requests that target dates be included in the Administration's official response to the audit findings and recommendations.

Priority Class ³²	Description
1	Fraud or serious violations are being committed. Significant fiscal and/or equivalent non-fiscal losses are occurring. Costly and/or detrimental operational inefficiencies are taking place. A significant internal control weakness has been identified.
2	The potential for incurring significant fiscal and/or equivalent non-fiscal losses exists. The potential for costly and/or detrimental operational inefficiencies exists. The potential for strengthening or improving internal controls.
3	Operation or administrative process will be improved.

³²The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number.

Appendix B: Objectives, Scope, and Methodology

In accordance with the City Auditor's Fiscal Year 2017 Audit Work Plan and per a request from Councilmember Zapf, we conducted a performance audit of the City's management of its Advisory Boards, which were established under City Charter Section 43(a).

The City's management of its Advisory Boards begins with their creation, and extends to identifying and vetting candidates to fill available positions; appointing qualified candidates; providing appointed members with information and resources to help them comply with applicable transparency requirements and best practices; and providing City staff assistance in Advisory Board operations. These functions are performed by numerous City departments, offices, and officials, including the Mayor's Office, the City Council, the City Attorney's Office, the City Clerk's Office, and liaisons to Advisory Boards that come from many different departments across the City Administration.

Objectives

During the scoping phase of the audit, we considered requests from Councilmember Zapf and former Council President Lightner, and also conducted our own preliminary review to identify potential structural issues that were impacting Advisory Board performance. As part of that process we developed the following objectives:

- **Objective 1:** Evaluate whether the City's process to fill Advisory Board positions is effective and efficient.
- **Objective 2:** Evaluate whether the City provides Advisory Boards with adequate information and resources to comply with applicable transparency requirements and best practices, such as the Brown Act (California's open meeting law).
- **Objective 3:** Evaluate the processes to create and periodically review Advisory Boards, and identify potential opportunities to standardize their organization and operation.

Our analysis of all of the above objectives benefited from the assistance and cooperation of many City officials and residents who are involved with the City's Advisory Boards. Specifically, we interviewed or otherwise obtained insight from staff from four different City Council offices; the Mayor's Deputy Chief of Staff for Community Engagement and the Mayor's Director of Appointments; three Deputy City Attorneys in the City Attorney's Office; the City Clerk, a Deputy Director, and a Program Coordinator in the City Clerk's Office; the Assistant Chief Operating Officer; Advisory Board liaisons from three different City departments who work with a total of eight of the City's Advisory Boards; the Director of Communications; and chairs of two different City Advisory Boards.

Scope and Methodology

To evaluate whether the City's process to fill Advisory Board positions is effective and efficient, we:

- Reviewed the City Clerk's quarterly Boards & Commissions Tracking Matrix, as well as member registers and vacancy and expired term listings maintained by the City Clerk's Office, in order to calculate the current number of vacancies and members serving on expired terms (as of March 2017);
- Reviewed a selection of Advisory Boards' posted meeting agendas, minutes, and other documents to determine which appeared to experience or be at risk of experiencing quorum issues;
- Reviewed the City Charter and obtained legal analysis from the City Attorney's Office regarding the Mayor's and the City Council's current appointment authorities for Advisory Board positions;
- Reviewed the current vetting process for Advisory Board candidates; and
- Evaluated the City's current outreach efforts for advertising available Advisory Board positions.

To evaluate whether the City provides Advisory Boards with adequate information and resources to comply with applicable transparency requirements and best practices, such as the Brown Act, we:

- Reviewed the Brown Act;

- Obtained legal analysis from the City Attorney's Office regarding the Brown Act's applicability to the City's Advisory Boards;
- Evaluated the City's current efforts to educate Advisory Board members on Brown Act compliance; and
- Reviewed Advisory Board webpages and current electronic and manual methods and processes for posting Advisory Board information, such as agendas, minutes, and reports.

To evaluate the processes to create and periodically review Advisory Boards, and identify potential opportunities to standardize their organization and operation, we:

- Evaluated the Mayor's Office's current plans for a review of the City's Advisory Boards, intended to improve organization and standardization;
- Evaluated the City's current process to analyze proposed new Advisory Boards regarding organization, standardization, and cost;
- Reviewed Advisory Board's periodic reporting requirements;
- Evaluated the City's current processes for monitoring compliance with Advisory Boards' periodic reporting requirements; and
- Evaluated the City's current practices for periodically reviewing existing Advisory Boards to ensure they are organized effectively and are providing a valuable service to the City.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our audit objectives.

Appendix C: Active Advisory Boards

Active Advisory Board Name (City Charter Section 43(a) Boards)	Total # of Member Positions	# of Positions Filled by Members Serving on Expired Terms	# of Positions Vacant	Report Out Responsibilities (Y/N)
Accessibility Advisory Board	9	0	1	Y
Airports Advisory Committee	12	4	1	N
Arts and Culture, Commission for	15	0	2	N
Balboa Park Committee	12	9	0	N
Bicycle Advisory Board*	11	0	11	Y
Board of Building Appeals and Advisors	10	10	0	N
Citizens' Equal Opportunity Commission	11	7	4	Y
Citizens' Advisory Board on Police/Community Relations*	15	0	3	Y
Community Forest Advisory Board	15	12	1	N
Community Reinvestment Review Advisory Committee	7	4	0	Y
Consolidated Plan Advisory Board	9	1	1	Y
Gang Prevention and Intervention, Commission on	13	7	0	Y
Historical Resources Board	11	7	1	Y
Housing Advisory and Appeals Board	5	1	4	N
Housing Commission, San Diego	7	4	0	N
Human Relations Commission	17	3	2	Y
Independent Rates Oversight Committee	11	2	1	Y
International Affairs Board	11	5	1	Y
Library Commissions, Board of	7	7	0	N
Mission Bay Park Committee	11	9	2	N
Municipal Golf Committee	11	0	1	N
Park and Recreation Board	11	6	2	N
Parking Advisory Board	17	10	2	N
Qualcomm Stadium Advisory Board	9	6	1	N
Relocation Appeals Board	5	2	3	N
Senior Affairs Advisory Board	11	3	5	Y
Small Business Advisory Board	11	10	0	Y
Sustainable Energy Advisory Board	11	5	0	Y
Wetlands Advisory Board	9	4	3	N
Youth Commission	20	20	0	Y
	334	158	52*	15

*As noted in Finding 1, there are currently 11 vacant positions on the Bicycle Advisory Board and 3 vacant positions on the Citizens' Advisory Board on Police/Community Relations that are not included in the list of vacancies posted on the City Clerk's website because they are new or reactivated boards for which not all positions have been filled. Therefore, the analysis in Finding 1 uses 38 as the total number of vacancies as of March 2017.

Source: OCA, based on data from the City Clerk's quarterly Boards & Commissions Tracking Matrix, as of March 2017.

**Appendix D: Memorandum From
the City Attorney's Office**

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

DATE: March 13, 2017 (619) 533-5800
TO: City Auditor
FROM: City Attorney
SUBJECT: Audit of City Boards: Charter Section 43(c) and Vacancies

INTRODUCTION

This memorandum responds to questions from your office related to an audit of City boards created under San Diego Charter (Charter) section 43. The audit considers:

- The process to identify candidates and appoint members to boards, to fill either scheduled or unscheduled vacancies;
- The process to ensure boards comply with applicable transparency requirements and best practices, such as the Brown Act; and
- Processes to create and periodically review the work of boards, and the potential for standardizing their organization and operation.

As part of the audit, your office has asked the City Attorney's Office legal questions related to Charter section 43(c), which states, in relevant part:

(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

.....

Your office suggested the word "shall" (in the phrase "the Council shall make such appointments") "seems to indicate the Mayor loses the authority to appoint after a vacancy has existed for 45 days."

City Auditor
March 13, 2017
Page 2

Your office also referred to voter materials from November 4, 1969 when the Charter was amended to include a 45-day rule, which our office independently analyzed.¹ We note that the relevant Charter section had a different impact when enacted, as the Mayor was a member of the City Council at that time and continued to have a voice in the nomination and confirmation process after 45 days had lapsed. The section previously operated to include the rest of the Council, along with the Mayor, in the appointment process after the time lapsed; it did not operate to exclude the Mayor from the process. The effect of this language is different under the Mayor-Council form of governance, as the expressed shift in power to the Council now operates to exclude the Mayor.

The audit is considering the fact that the Mayor, since the Mayor-Council form of governance took effect, has made appointments to City boards and commissions more than 45 days after certain vacancies occurred. In such cases, the late-arriving appointments were still docketed for Council confirmation and confirmed.

QUESTIONS AS STATED BY AUDITOR

1. Under Charter Section 43(c), does the Mayor lose the authority to make appointments to Charter Section 43(a) and 43(b) boards and committees 45 days after a board or committee is created or a vacancy occurs?
2. Does the term “shall” (used in Charter section 43(c)), ultimately mean that only the Council can fill a vacancy after 45 days?
3. Does the term “vacancy” in Charter Section 43(c) apply to scheduled vacancies, unscheduled vacancies, or both?
4. Council Policy 000-13 addresses the 45-day language regarding appointments. Can a Council Policy be used to supersede the Charter?

SHORT ANSWERS

1. Not necessarily. It becomes the Council’s choice whether to docket late-arriving appointments for confirmation. The authority provided in Charter section 43(c) is directory and not mandatory: The Council may exercise the appointment authority in a given instance or confirm late-arriving appointments from the Mayor. The Charter does not operate to prohibit the Council from confirming such appointments, nor does it set a deadline for the Council’s actions. Moreover, a distinction must be made between appointments for boards created under section 43(a) and committees created under section 43(b), as explained below.

¹ See <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/elections/city/pdf/pamphlet691104.pdf>. Former section 43.1, no longer in the Charter, said that after the Council has “failed or refused to confirm two successive nominations of the Mayor,” the nominations and appointments shall be by vote of the Council – which still included the Mayor as a member. The section was repealed in 1969, replaced by the current 45-day language in a new section 43(c).

City Auditor
March 13, 2017
Page 3

2. No, the word “shall” used in this context is directory and not mandatory, as explained above and in the analysis below.

3. The term “vacancy” is not limited or defined in Charter section 43(c). It must be harmonized, and considered in context, with other Charter sections, which give the Mayor “sole” authority to fill all vacancies on boards and commissions. The term thus is interpreted broadly to include both scheduled and unscheduled vacancies.

4. A Council Policy cannot supersede or contravene the Charter, which is the City’s constitution and its supreme local law. A Council Policy can work in harmony with the Charter, however, by adding procedures that will carry out what the Charter intends. Council Policy 000-13 adds procedures, and does not supersede or contradict the Charter.

BACKGROUND

The City has more than 50 active boards created under Charter section 43(a) by ordinance of the Council. The City also has more informal citizens’ advisory committees, created under Charter section 43(b) and approved by resolution, that may be set up to report to the Mayor or to the Council.

Members of Charter section 43(a) boards are appointed to specific terms, often in defined categories, and must meet Municipal Code requirements for appointment, which vary according to a board’s governing law. Members of Charter section 43(a) boards are appointed by the Mayor, subject to Council confirmation, and then to mayoral veto. Such appointments are accomplished by resolution.

Members of Charter section 43(b) citizens’ advisory committees are appointed once and continue serving until the committee completes its work advising on questions with clearly defined objectives. Such committees automatically dissolve upon the completion of the objectives for which they were created. Appointments are made by whoever creates the committee – the Mayor or the Council – and may be accomplished by memorandum of the Mayor or resolution of the Council. If a member leaves a position on a Charter section 43(b) committee before its work is complete, the vacancy would be filled the same way: by memorandum from the Mayor for a mayoral advisory committee or resolution of the Council for a Council advisory committee. There is no role for either the Council or Mayor in a citizens’ advisory committee under section 43(b) that answers to the other, or that was not set up to answer to both.

Charter section 43(c) provides that whenever the Charter or Municipal Code give the appointment authority to the Mayor, and the Mayor does not take action within 45 days after the board or committee is established or a vacancy occurs, then the Council “shall make such appointments.” This provision is interpreted to apply only to a Charter section 43(a) board, as members of a citizens’ advisory committee do not have set terms and are appointed once by the person or entity it advises. As the Council has no role in confirming appointees to a section 43(b) mayoral advisory committee, it would be legally contradictory for the Council to fill a vacancy on such a committee. Thus, this memorandum considers section 43(a) board vacancies only.

ANALYSIS

I. THE CHARTER GIVES THE MAYOR A DEADLINE TO MAKE APPOINTMENTS TO SECTION 43(a) BOARDS BEFORE THE AUTHORITY SHIFTS, BUT THE COUNCIL CAN CHOOSE NOT TO EXERCISE THAT POWER; THE COUNCIL WAIVES ITS RIGHT TO APPOINT WHEN IT CHOOSES TO CONFIRM LATE-ARRIVING APPOINTMENTS.

The Mayor is responsible for hundreds of appointments to more than 50 City boards created under Charter section 43(a). The Council is responsible for confirming those appointments. San Diego Charter § 43(a). Council Policy 000-13 details procedures to accomplish this, which include a process for gathering nominations from Councilmembers to fill positions and determining how confirmation will be docketed for hearing by the Council.²

When voters approved the Mayor-Council form of governance, they approved Charter amendments retaining the Mayor's "authority to appoint members of City boards, commissions, and committees, subject to Council confirmation" in Charter sections 41 and 43. San Diego Charter § 265(b)(12). The Council retained its powers "to establish committees of the Council and to establish advisory boards and citizen committees as provided for in Charter section 43." San Diego Charter § 270(e). This includes the Council's power to remove committee and board members by majority vote; and to appoint members to any such boards or committees should the

Mayor fail to do so within 45 days of a vacancy occurring, or after a board is established. San Diego Charter § 43(c). Amendments added language reiterating the Mayor's "[s]ole 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." San Diego Charter § 265(b)(12) (emphasis added).

The first two questions posed by the Auditor's Office are essentially the same and are addressed together: After 45 days pass and there is no action by the Mayor to make appointments, (1) does the Mayor lose the authority to make appointments; and (2) does the term "shall" used in the Charter ultimately mean that only the Council can fill a vacancy at that point? Both questions require legal analysis of the phrase "shall make the appointments."

² Council Policy 000-13 states in relevant part: "*Nomination and Appointment*: Unless otherwise specified by Charter, ordinance, or other controlling authority, Councilmembers may submit to the Mayor one nominee for each vacancy. The nomination should include the nominee's resume and completed application. Similar to unclassified employees, nominees will be required to undergo a background check and, if relevant to the position being sought, a financial inquiry. Nominations to fill an expired term must be submitted to the Mayor no later than 30 days before the expired term ends. However, the Mayor may consider nominations submitted after the 30-day period. Nominations to fill an unscheduled vacancy must be submitted to the Mayor within 15 business days of the date the Clerk posts the notice of the unscheduled vacancy. After the relevant time period has passed, and upon receipt of the Mayor's memorandum, the Council President will place the matter of the appointment on the next available regularly scheduled Council meeting docket."

A. The Charter's Use of the Word "Shall" is Directory, Not Mandatory, Giving the Council a Choice of Whether to Exercise the Power.

Requirements relating to the time within which an act must be done are directory rather than mandatory unless the Legislature clearly expresses a contrary intent. *Edwards v. Steele*, 25 Cal. 3d 406, 410 (1979). "In ascertaining probable intent, California courts have expressed a variety of tests. In some cases focus has been directed at the likely consequences of holding a particular time limitation mandatory, in an attempt to ascertain whether those consequences would defeat or promote the purpose of the enactment. [Citations.] Other cases have suggested that a time limitation is deemed merely directory 'unless a consequence or penalty is provided for failure to do the act within the time commanded.' [Citations.]" *Id.* The consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as "mandatory." *Morris v. County of Marin*, 18 Cal. 3d 901, 908 (1977) (disapproved on other grounds in *Caldwell v. Montoya*, 10 Cal. 4th 972, 978, n.8 (1995)). Thus, as a general rule, a 'directory' or 'mandatory' designation does not refer to whether a particular statutory requirement is 'permissive' or 'obligatory,' but instead denotes whether the failure to comply with a particular procedural step will have the effect of invalidating the governmental action to which the procedural requirement relates.

In the case of section 43(c), there is a single stated consequence: a transfer of authority. If the Mayor fails to make an appointment during the applicable 45-day period, the Council assumes the power to make that appointment. There is no stated consequence if the Council chooses *not* to exercise that power.

Charter section 43(c) shifts the power after 45 days to give the Council a choice: it can take responsibility for making appointments or it can docket late-arriving mayoral appointments. Significantly, the Charter does not include language that would invalidate any appointments the Mayor may make at a late date, underscoring that this is a directory, and not mandatory, rule.

Council Policy 000-13 provides a process for how the Council will notify the Mayor should it wish to assume the power for a given appointment. The Council has expressed a policy of providing the Mayor with additional time beyond the 45 days because of the realities of finding and vetting qualified candidates. (See discussion on p. 8 of this Memorandum.)

Although the Charter states that the Council "shall" make the appointments after the 45-day period, the Council waives its ability to claim that power when it docket late-arriving appointments for confirmation. *This is the Council's choice.* Significantly, nothing in the Charter states that the Mayor's late-arriving appointments are invalidated if the Council chooses to confirm them. In fact, the Charter never sets a deadline for any Council action, whether it makes its own appointments or confirms those from the Mayor. The Council already has a role to play in the appointment process, as the Mayor's appointments cannot advance without Council confirmation. Regardless of how it chooses to proceed, the Council plays a significant role in ensuring that board and commissions are fully staffed, which is the purpose of the 45-day rule.

City Auditor
March 13, 2017
Page 6

B. The Council May Choose Not to Exercise the Appointment Power, but to Confirm Late-Arriving Mayoral Appointments to Effect the Purpose of the Charter Section.

In construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose. Therefore, a practical construction is preferred. *People ex rel. Riles v. Windsor University*, 71 Cal. App. 3d 326, 332 (1977). “[W]e do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’ ” *Horwich v. Superior Court*, 21 Cal. 4th 272, 276 (1999).

The ballot argument in favor of the November 1969 Charter amendment said the measure was designed “[t]o guarantee that essential advisory functions be continuous,” and thus the Charter should specify that if the Mayor does not fill commission, board, or committee vacancies within 45 days, the appointment shall be made by the Council. (See Voter Pamphlet, November 4, 1969 election, at 28, <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/elections/city/pdf/pamphlet691104.pdf>). As set forth above, at the point of its enactment the provision operated to add the rest of the Councilmembers to the appointment process, not to exclude the Mayor, as the Mayor was a member of the Council.

As the ballot argument confirmed, the purpose of the provision is that appointments and reappointments be made in a timely fashion: the time limit appears designed so boards and commissions may function with a full roster of members, without needing more members to reach a quorum, and so they can conduct business without interruption. We do not have information regarding how long it routinely has taken the Mayor or Council to act after vacancies have occurred. It is possible, however, that Council confirmation of late-arriving appointments allows certain appointments to be made more efficiently and quickly in some instances than if the Council took responsibility to start finding qualified people to fill the spots at that late date.

If the appointment process is underway by the Mayor’s Office, the Council may well wish to provide flexibility to allow the Mayor additional time and still ensure appointments are made as timely as possible. Providing additional time and confirming appointments made later may, in some instances, become more practical than a situation that cuts off jurisdiction of the Mayor regardless of the time and resources expended to find appointees. As a “directory” clause in the Charter, section 43(c) provides the Council the power to choose how it wishes to proceed.

City Auditor
March 13, 2017
Page 7

II. THE TERM “VACANCY” IN CHARTER SECTION 43(C) IS NOT DEFINED AND MUST BE CONSTRUED AS ALL-INCLUSIVE, COVERING SCHEDULED AND UNSCHEDULED VACANCIES, AS THE MAYOR IS EMPOWERED TO FILL BOTH.

The next question is whether the term “vacancy”³ in Charter Section 43(c) applies to scheduled vacancies, unscheduled vacancies, or both.

The Mayor is empowered by the Charter to make appointments to fill any vacancy on a Charter section 43(a) board – whether scheduled or unscheduled. The Charter does not define the term “vacancy” in section 43(c) and thus its meaning must be harmonized with the Mayor’s appointment powers throughout the Charter. The definition of “vacancy” must be considered with the fact the section refers to “[w]henever under the provisions of this Charter or ordinance” the Mayor has authority to appoint members. (Emphasis added.) Charter section 265(b) also gives the Mayor “sole” authority to fill vacancies on Charter section 43(a) boards. Thus, the definition must be construed to cover both scheduled and unscheduled vacancies.

A. The City Clerk’s Procedures to Notice Vacancies Meet Government Code Requirements

Related to this issue, your office asked whether the City is in compliance with California Government Code (Government Code) sections 54970 through 54972,⁴ which require the City to prepare an appointments list containing: (1) all appointive terms that will expire during the next calendar year; (2) notice of any unscheduled vacancy; and (3) the qualifications for each position. Your office asked whether the Clerk’s Office is in compliance if the information is not included in a *single list*.

The Clerk’s Office prepares a matrix including all of the information – terms, notices, members and qualifications – that it distributes each quarter to the Mayor, Council and Auditor to meet statutory requirements regarding the list.

The website also lists scheduled and unscheduled vacancies as required by the Government Code. The same webpage links to a web page for each board and commission, with links to the ordinances setting forth qualifications for members. All of this information is available on the City’s website. The link states that each board or commission website includes a description of its responsibilities, a list of its members and its conflict of interest code, if applicable.

³ Vacancies on City boards arise when someone resigns, dies, is removed by a vote of the Council, or reaches the end of a term. Charter section 43 boards include provisions, many in their governing Municipal Code sections, stating that members whose terms expire, and who have not formally resigned, hold over in their seats until their successor is appointed. Unscheduled vacancies are any that do not coincide with the end of a term.

⁴ The Government Code sections apply to Charter cities, as specified in Government Code section 54971.

City Auditor
March 13, 2017
Page 8

Your office has suggested that all of this information needs to be on one list. We believe the matrix meets the requirement. This is supplemented by the information readily available on the City's website, providing the public access to all the required information in one location.

We also note the Government Code suggests the City is to maintain the list annually and can charge the public for the list. Cal. Gov't Code § 54973. The City keeps lists current online and makes them freely available.

III. A COUNCIL POLICY CANNOT SUPERSEDE THE CHARTER, BUT CAN PROVIDE PROCEDURES TO CARRY OUT WHAT THE CHARTER REQUIRES.

Finally, your office noted that the Council Policy 000-13 includes a provision that gives the Mayor flexibility with the 45-day rule regarding appointments, as follows, in relevant part:

. . . the Council acknowledges that the application and background check process for candidates can require additional time, and therefore may consider Mayoral appointments received after the 45-day period. The Council President will provide 10 business days' written notice to the Mayor if the Council intends to assume the appointment process per Charter sections 41 or 43(c). If the Council assumes the appointment process, it will follow the procedures set forth in Section C of this Council Policy, below. (Emphasis added.)

Council Policies are the policy statements of the City Council not covered by ordinance. Council Policy 000-01 establishes a "Council Policy Manual" which contains "all City policy statements adopted by resolution of the City Council." This Council Policy states in relevant part, "[t]he City Council of the City of San Diego is charged with the responsibility of establishing municipal policies to guide the various functions of the City and, where necessary, to establish procedures by which functions are performed."

Council Policy 000-13 states as its purpose: "It is the intent of the City Council to establish a uniform procedure for the appointment and confirmation of members of commissions, boards, committees, authorities, and districts pursuant to the provisions of this policy. This policy will apply unless it conflicts with the City Charter, ordinance, corporate bylaws, or other controlling legal authority."

As set forth above, the Council's authority to make appointments under Charter section 43(c) is directory and not mandatory, and thus the Council Policy does not conflict with that authority. It is a policy decision of the Council as to whether it wishes to exercise the appointment power in a given instance. The policy provides a framework for the process and avoids confusion about the roles that the Mayor and Council play in light of the Mayor-Council system of government. It sets a procedure for the instances in which the Council chooses to exercise the appointment power.

City Auditor
March 13, 2017
Page 9

CONCLUSION

Charter section 43(c) was enacted to ensure the City's boards have a full roster of capable members and that their work continues uninterrupted by a flow of unfilled vacancies. The provision that allows the Council to make appointments when the Mayor has not done so within 45 days of a vacancy is directory and not mandatory. After the time has passed, it becomes the Council's choice as to how to proceed: The Charter gives the Council the power to choose whether to exercise the appointment authority in a given instance or to confirm late-arriving appointments from the Mayor. The Charter provision does not operate to prohibit the Council from confirming late-arriving appointments, nor does it set a deadline by which the Council must make or confirm appointments from the Mayor or directly from the Council.

The Council, recognizing the difficulties and realities of finding capable people to staff numerous boards, has provided additional flexibility in a Council Policy, indicating its desire to work with the Mayor to carry out what the Charter intends. If the Council desires to be more proactive and assert its authority under the 45-day rule to make appointments in a given instance, the Council is empowered to make that policy decision.

MARA W. ELLIOTT, CITY ATTORNEY

By 

Sharon B. Spivak
Deputy City Attorney

SBS:jdf:ccm
MS-2017-4
Doc. No.: 1457359
cc: Elizabeth Maland, City Clerk



THE CITY OF SAN DIEGO
M E M O R A N D U M

DATE: May 31, 2017

TO: Eduardo Luna, City Auditor

FROM: Elizabeth Maland, City Clerk
Francis Barraza, Director of Appointments & Special Projects,
Office of the Mayor

SUBJECT: Management Response to Performance Audit of the City's Management of Its Advisory Boards

This memorandum is management's response to the audit recommendations within the Performance Audit of the City's Management of Its Advisory Boards.

The Audit's primary objectives were to:

- Determine whether the City can take additional steps to improve the process for filling available seats, help increase transparency and promote public participation, and monitor efficiency and effectiveness.

Below are Management's responses to the Audit Recommendations. Management will refer to both mayoral and non-mayoral departments as appropriate. The City Attorney's Office will provide a response to recommendations specific to their office and will not be addressed herein.

Recommendation 1-3: In order to quickly identify and appoint members to vacant positions and replace members serving on expired terms, we recommend:

- 1) The City Clerk's Office, upon consultation with the City Attorney's Office, should develop and document a process on how to calculate the 45-day period specified in City Charter Section 43(c) for both unscheduled vacancies and expired terms, as well as which boards the rule applies to. (Priority 2)
- 2) The City Clerk's Office should notify the City Council of its authority to appoint after 45 days of the Mayor not appointing by including a statement on this authority on every notification of unscheduled vacancy or expiring terms sent to City Council Offices, when Charter Section 43(c) applies to the available position. These notifications should also include a projected date on which the vacancy may reach the 45-day mark if the Mayor does not take action to appoint someone to the position. (Priority 2)
- 3) The City Clerk's Office should include a column showing the 45-day date of all vacancies on its Boards & Commissions tracking matrix, which is provided to Council Offices on a quarterly basis. (Priority 3)

Management Response: Agree.

The Performance Audit determined that the City Council may not be sufficiently aware of their authority to appoint should the Mayor not appoint within 45 days after a term expires or a seat becomes vacant. The City Clerk's Office will include a statement on their authority on any notification of an unscheduled vacancy or expiring terms list sent to City Council

Offices when Charter Section 43(c) applies to the available position. The notifications will also include the projected date on which the vacancy may reach the 45-day mark should the Mayor not appoint to the position. The City Clerk's Office will also add a column to the quarterly Boards & Commissions tracking matrix that shows the 45-day mark for expiring terms and vacancies. This additional information will be included once it has been determined how the timeframe ought to be calculated from a legal standpoint. Please note that further policy direction may also be required.

Target Implementation Date: January 2018

Recommendation 4: In order to allow some appointments to be made more quickly, while also preserving the City Council's role of approving the Mayor's appointees to Advisory Boards, we recommend:

- 4) The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, should consider a proposal to amend the Municipal Code regarding appointments to Advisory Boards that require the Mayor to appoint only from nominees provided by the City Council. The amendment should include a deadline for Councilmembers to provide nominees to the Mayor after a vacancy has occurred, after which time the Mayor may name an appointee even if the Council has not provided a nominee. The appointee should still be required to meet all other qualifications required for the Advisory Board position, and be confirmed by the City Council. (Priority 2)

Management Response: Agree.

The Performance Audit determined that some appointments may be delayed where the Mayor is required to select an appointee from nominees provided by the City Council. The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, will consider a Municipal Code amendment whereby the Mayor may appoint even if the Council has not provided a name, while ensuring that the appointee meet all the qualifications required for the position, and the appointment be confirmed by council.

Target Implementation Date: January 2018

Recommendation 5: In order to set timeline expectations for the vetting process, formally establish responsibility for various steps of the vetting process, and clarify how the vetting process should be conducted in the event the Council plans to make an appointment to an Advisory Board, we recommend:

- 5) The Mayor's Office, in consultation with the Office of the Council President, should revise Council Policy 000-13, "Procedure for Mayor and Council Appointments," to formally document required steps in the vetting process for Advisory Board candidates, including establishing responsibilities for completing each step as well as timelines for completion. The revised policy should address differences, if any, between the vetting processes for candidates to be appointed by the Mayor versus candidates to be appointed by the City Council. (Priority 2)

Management Response: Agree.

The Performance Audit determined that expectations could be made clearer for how quickly vetting should be completed and what steps are required to complete vetting. The Mayor's Office, in consultation with the Office of the Council President, will assist in the revision of Council Policy 000-13 to document the required steps in the vetting process, including establishing responsibilities for completing each step as well as timelines for completion.

The revised policy will address both the vetting process undertaken by the Mayor's Office and the City Council.

Target Implementation Date: January 2018

Recommendation 6: In order to make the best use of the City's available resources and to better inform the public of vacant Advisory Board positions and positions for which terms have expired, we recommend:

- 6) The Mayor's Office, in conjunction with City Council President, the City Clerk, and the Communications Department, should develop and document a standard strategy for publicizing Advisory Board vacancies and positions for which terms have expired. (Priority 3)

Management Response: Agree.

The Performance Audit determined that existing resources could be leveraged to identify qualified candidates for current and future vacancies. The Mayor's Office, in conjunction with the Office of the Council President, the City Clerk, and the Communications Department, will develop and document a standard strategy for publicizing vacancies and expired terms.

Target Implementation Date: October 2017

Recommendation 7-9: In order to promote compliance with legal requirements, increase transparency, and improve public awareness and participation in Advisory Boards, we recommend:

- 7) The Communications Department should work with the City Attorney's Office to develop a training video for the Brown Act, and the City Administration should require all Advisory Board members to watch the video on an annual basis. The staff liaisons for each Advisory Board should be responsible for ensuring that all board members view the training video within their first 30 days of serving on the Advisory Board and again every two years. The staff liaisons should develop a process to ensure that all board members sign an attestation confirming that they viewed the video. (Priority 2)
- 8) The City Administration, in consultation with the City Attorney's Office, should provide a live Brown Act training for all Advisory Board members on a periodic basis, and should ensure that the staff liaisons for the boards attend this live training at least once per year. (Priority 2)
- 9) The City Administration should develop or procure a standard Brown Act compliance document, as approved by the City Attorney's Office, and provide it to all new and existing Advisory Boards. This standard should be posted on the City's website. In addition, the City Administration should ensure that each Advisory Board is provided with a website or with access to a designated page on the City's website, and document procedures and responsibilities for posting meeting agendas, minutes, and other applicable documents online. (Priority 2)

Management Response: Agree.

The Performance Audit determined that transparency and public participation could be increased through additional training and resources. The City Administration will ensure that a standard compliance document, and training video are utilized to ensure that Advisory Board members and staff liaisons are trained, as recommended.

Target Implementation Date: January 2018

Recommendation 10-12: In order to maximize the efficiency and effectiveness of the City's Advisory Boards, we recommend:

- 10) The Mayor's Office should follow through with its planned steps for reviewing the City's Advisory Boards for reorganization and standardization, and present recommendations to the City Council for consideration. (Priority 2)
- 11) The Mayor's Office should develop a standard format for reports to City Council regarding new Advisory Boards prior to their establishment. This report should include analysis of whether the functions of the proposed board could be incorporated into an existing board. This report should also include estimates of the City staff hours/cost to administer the proposed new Advisory Board. (Priority 2)
- 12) The Mayor's Office, in coordination with the Office of the Council President, should develop a standard, form-based annual report template and require each Advisory Board to complete and submit this report to the City Council on an annual basis. The form should include:
 - The mission and duties of the Advisory Board, as established by the Mayor and City Council, and stated in the Municipal Code;
 - A brief summary of the actions taken by the Advisory Board that year;
 - The number of Advisory Board meetings held (including the number of meetings cancelled and the reason for any cancellation);
 - Whether the Advisory Board has experienced any issues with quorum;
 - The number of vacant positions on the Advisory Board;
 - The number of members serving on expired terms;
 - Any concerns the board would like to bring to City Council's attention; and
 - An estimate of the City staff hours/cost to administer the board.

Management Response: Agree.

The Performance Audit determined that the City's Advisory Boards could provide more valuable advice to the Mayor and City Council by utilizing a standardized report and consistent guidelines. The Mayor's Office will present its findings and recommendations for a potential reorganization and standardization of the City's Advisory Boards to the City Council. The Mayor's Office will develop a standard format for reports to City Council regarding new Advisory Boards prior to their establishment including an analysis of whether the proposed functions could be incorporated into an existing board as well as potential staff hours and cost. The Mayor's Office, in consultation with the Office of the Council President, will develop a standard form-based annual report template and require each board to submit the report to the City Council on an annual basis. The annual report template will include all recommended elements.

Target Implementation Date: October 2017

Recommendation 13-14: The Mayor's Office, in consultation with the Office of the Council President and the Office of the City Attorney, should determine how the requirement that all Advisory Boards complete this report and provide it to the Mayor, the City Council, and the City Clerk's Office on an annual basis, and appear at City Council or Council Committee meetings upon Council or Council Committee request, can best be implemented. In addition, the City Administration should document a procedure designating each Advisory Board's department liaison as responsible for providing the board's annual report to the Mayor's Office, the City Council, and the City Clerk's Office, once submitted by the Advisory Board. (Priority 2)

- 13) The City Clerk's Office should document a procedure to update its matrix on an annual basis to account for the annual reports, once received, and note if any reports

were not submitted. The matrix should include links to the annual reports and should be sent to City Council. (Priority 3)

- 14) The Mayor's Office, in coordination with the Office of the City Council President, should develop and implement a formal review process/policy for City Advisory Boards. This review of all Advisory Boards should be completed at least once every two years, and should include consideration of the potential to reorganize or consolidate existing Advisory Boards, revise Advisory board membership requirements to facilitate recruitment, and sunset Advisory Boards that are obsolete or redundant. (Priority 2)

Management Response: Agree.

The Performance Audit determined that there may be City Advisory Boards with overlapping issue areas or "no longer serve a valuable purpose" due to inactivity or perpetual quorum difficulties. Once the City Clerk's Office receives information from the Mayor's Director of External Appointments and/or the Council President's Director of Legislative Affairs regarding which Annual Reports have been filed, that information will be included in the calendar year-end matrix that will be distributed to the Mayor and Council. Additionally, all Board and Commission staff liaisons will post to their websites, per Recommendation #9, a copy of their annual reports. The Mayor's Office, in consultation with the Office of the Council President and the City Attorney's Office, will consider the development of a formal review process/policy for City Advisory Boards including biannual review, potential consolidation and reorganization, revision of membership requirements, and sun setting.

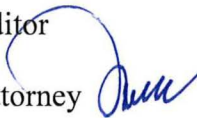
Target Implementation Date: January 2018

Elizabeth Maland
City Clerk

cc: Honorable Council President Myrtle Cole
Honorable City Attorney Mara Elliott
Stephen Puetz, Chief of Staff, Office of the Mayor
Andrea Tevlin, Independent Budget Analyst
Scott Chadwick, Chief Operating Officer
Stacey LoMedico, Assistant Chief Operating Officer
Mary Lewis, Chief Financial Officer
David Graham, Deputy Chief Operating Officer, Neighborhood Services
Paz Gomez, Deputy Chief Operating Officer, Infrastructure/Public Works
Ron Villa, Deputy Chief Operating Officer, Internal Operations
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Felipe Monroig, Deputy Chief of Community Engagement, Office of the Mayor
Marshall Anderson, Director of Council Affairs, Office of the Mayor
Kenneth So, Deputy City Attorney, City Attorney's Office
Kyle Elser, Assistant City Auditor, Office of the City Auditor
Lori Witzel, Director of Council Administration

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: May 31, 2017
TO: Eduardo Luna, City Auditor
FROM: Mara W. Elliott, City Attorney 
SUBJECT: Response to "Performance Audit of the City's Management of its Advisory Boards and Committees"

Our office has reviewed the findings and recommendations in the "Performance Audit of the City's Management of its Advisory Boards and Committees" prepared by the Office of the City Auditor. The City Auditor recommends that the City Clerk's Office, Mayor's Office, Communications Department, and Council President's Office consult with the City Attorney's Office to implement recommendations 1, 4, 7, 8, 9, and 12. These recommendations include:

- Developing a process for the City Council to exercise its authority to appoint members to advisory boards pursuant to San Diego Charter section 43(c).
- Improving the procedure for soliciting nominations from City Councilmembers for Mayoral appointments to advisory boards.
- Preparing a Brown Act live training and video for advisory board members.
- Preparing a Brown Act compliance document for advisory boards.
- Standardizing the procedure for advisory boards to report to City Council.

As always, this Office is available to advise the City Clerk, Mayor, Communications Department, and Council President in implementing the City Auditor's recommendations.

MWE:jlb
Doc. No.: 1512833