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MEMORANDUM

TO: MEMBERS,
San Francisco Elections Commission

FROM: Julia A. Moll 
Deputy City Attorney

DATE: July 1, 2005

RE: Powers and Duties of the San Francisco Elections Commission

In anticipation of the upcoming Elections Commission retreat, scheduled for July 22, 2005, Commissioner Matthews requested that we provide some *general* information about the role of commissions in the City and County of San Francisco, and *specific* information about the powers and duties of the San Francisco Elections Commission. This information is provided below. Please let me know if you have questions about this memorandum or would like additional information.

I. INTRODUCTION

The San Francisco Charter is the City and County constitution and regulates all aspects of local government and administration. Under the Charter, the Mayor is responsible for the general administration and oversight of all departments and governmental units in the executive branch of the City and County, and he or she appoints most commissioners (as discussed below, the Department of Elections and the Elections Commission are not in the executive branch). Charter § 3.100. The Board of Supervisors is the legislative body for the City and County. The Board, which consists of eleven members elected by district, establishes City policies and adopts ordinances and resolutions. Charter Article II.

In addition to the Mayor and Board of Supervisors, commissions play a significant role in City and County governance. Charter § 4.102. These bodies, which are created by the Charter and City ordinances, establish policy for and oversee the departments of City and County government.

II. BACKGROUND: THE SAN FRANCISCO ELECTIONS COMMISSION

The San Francisco voters created the Elections Commission by Charter amendment approved in November 2001. The Commission consists of seven members who serve five-year terms. Charter § 13.103.5. The Mayor, the Board of Supervisors, the City Attorney, the Public Defender, the District Attorney, the Treasurer, and the Board of Education of the San Francisco Unified School District each appoint one member of the Commission.

There are significant qualifications for service on the Elections Commission. The Mayor's appointee is required to have a background in the electoral process. The City Attorney's appointee is required to have a background in elections law. The Treasurer's appointee is required to have a background in financial management. The members appointed by the District Attorney, Public Defender, the Board of Education of the San Francisco Unified School District, and the Board of Supervisors are required to be broadly representative of the general public. Charter § 13.103.5.

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Members of the Commission are officers of the City and County. (A separate memorandum, included with the materials for the July 22, 2005 retreat, addresses the relationship between members of the Commission and their respective appointing authority, and an officer's duty of loyalty to the City and County.) In summary, City and County officers owe a duty of loyalty to, and must act in the best interests of, the City and County. Although each member of the Commission is appointed by a different City official or body, the Commissioners neither represent nor owe a duty of loyalty to their appointing authority. Commissioners must use their independent judgment about what is in the best interest of the City.

III. THE POWERS AND DUTIES OF THE ELECTIONS COMMISSION**A. The Specific Powers and Duties Vested in the Elections Commission**

Under the Charter, the Elections Commission is responsible for:

- Oversight of all public elections in the City and County;
- Establishment of general policies for the Department of Elections; and
- Proper administration of the general practices of the Department of Elections.

Charter § 13.103.5. These duties include, but are not be limited to:

- Approving written plans prior to each election, submitted by the Director of Elections, detailing the policies, procedures, and personnel that will be used to conduct the election;
- Approving alternative transportation and security plans, submitted by the Director of Elections, when the incumbent sheriff is running for re-election and under other limited circumstances;
- Requesting from the Board of Supervisors, upon the recommendation of the Director, a waiver of the general prohibition on City employees and officers assisting the Department of Elections; and
- Assessing how well the written plans succeeded in carrying out a free, fair and functional election.

Charter §§ 13.103.5, 13.104.5.

In addition, the Elections Commission is responsible for appointing the Director of Elections and three of the nine members of the Elections Task Force on redistricting. Charter §§ 13.104, 13.110(d). (A memorandum concerning the procedures for appointment and removal of the Director of Elections, dated December 29, 2003, is attached.)

B. The General Powers and Duties of City and County Commissions

In addition to the specific powers conferred and duties imposed on the Elections Commission, the Charter also describes the powers and duties of commissions *in the executive branch*. Because the Mayor does not appoint the Commission and does not have overall responsibility for general administration and oversight of the Department of Elections, the Elections Commission is not in the executive branch. Nonetheless, these general rules apply to the Commission to the extent that these general rules do not conflict with or are inherently incompatible with the specific powers and duties vested in the Elections Commission.

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Charter § 4.100. The general provisions that apply to the Elections Commission require the Commission to:

- Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation;
- Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;
- After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under [Charter] Section 9.103;¹
- Recommend to the Mayor for submission to the Board of Supervisors rates, fees and similar charges with respect to appropriate items coming within their respective jurisdictions;²
- Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;
- Exercise such other powers and duties as shall be prescribed by the Board of Supervisors;
- Prepare an annual report describing its activities, and file such report with the Mayor and the Clerk of the Board of Supervisors; and
- Appoint an executive secretary to manage the affairs and operations of the board or commission.

¹ Each City and County department is responsible for providing the Mayor and Board of Supervisors with a mission-driven budget that describes each proposed activity of the department and the cost of the activity. Charter § 9.114.

² However, Charter section 13.109 provides a specific rule for proposal and adoption of certain election-related fees, as follows:

The amount of fees to be charged for candidate filings, candidate statements, paid arguments and any other fees to be collected in the conduct of elections shall be proposed by the Director of Elections for approval by the Board of Supervisors on or before the second Monday in December immediately prior to the election in which the fees apply.

Signatures of registered voters in the City and County may be submitted in lieu of any filing fee. At the same time the Board of Supervisors approves the schedule of fees for the election, the Director of Elections, with the approval of the Board of Supervisors, shall establish the dollar value equivalent of each valid signature submitted.

Accordingly, to the extent there is a conflict between the general rule set forth in section 4.102(4) and the more specific rule established by section 13.109, section 13.109 would apply. Charter § 4.100; *Woods v. Young* (1991) 53 Cal.3d 315, 325.

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Charter §§ 4.102(1)-(4), (7)-(10), 4.103, 4.104.

To ensure its orderly operation, each commission is required to:

- Adopt rules and regulations consistent with the Charter and City and County ordinances. No rule or regulation may be adopted, amended or repealed, without a public hearing. At least ten days' public notice is required in advance of such public hearings. All rules and regulations must be filed with the Clerk of the Board of Supervisors;
- Hold meetings open to the public and encourage the participation of interested persons. Closed sessions may be held only in accordance with applicable State and local laws; and
- Keep a public record of its proceedings that indicate how each member voted on each question.

Charter § 4.104.

Finally, to carry out its duties, a commission may hold hearings and take testimony. Charter § 4.102(10). In addition, relative solely to the affairs under its control, a commission may examine the department's documents, subpoena witnesses and compel production of documents. Charter § 16.114.

IV. THE POWERS AND DUTIES OF THE DIRECTOR OF ELECTIONS

A. The Specific Powers and Duties Vested in the Director of Elections

Under the Charter, the Department of Elections is responsible for conducting all public elections in the City and County. Charter § 13.104. For purposes of this section, the conduct of elections includes, but is not limited to: voter registration; the nomination and filing process for candidates to City and County offices; the preparation and distribution of voter information materials; ballots, precinct operations and vote count; the prevention of fraud in such elections; and the recount of ballots in cases of challenge or fraud.

The Director of Elections is responsible for administering the Department of Elections, and is vested with the day-to-day conduct and management of the Department. Charter § 13.104. Subject to the civil service provisions of the Charter, the Director may appoint and remove employees of the Department. As indicated above, the Director of Elections is appointed by and reports to the Elections Commission.

B. The General Powers and Duties Vested in City and County Department Heads

In addition to the specific responsibilities of the Director of Elections, Charter section 4.126 lists general powers and duties that apply to City and County department heads *in the executive branch*. As indicated above, because the Mayor does not have overall responsibility for administration and oversight of the Department of Elections, and does not play a role in selection of the Director of Elections, the Department is not in the executive branch. Nonetheless, the general provisions of section 4.126 apply to the Director of Elections to the extent that these responsibilities and duties do not conflict with the specific responsibilities and duties vested in the Director. Charter § 4.100.

The provisions of Section 4.102 that apply to the Director of Elections provide that the Director is responsible for the "administration and management of" the Department, and may:

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- Appoint qualified individuals to fill all positions within their departments that are exempt from the Civil Service provisions of this Charter;
- Adopt rules and regulations governing matters within the jurisdiction of the department, subject to the powers of the Elections Commission; and
- With the approval of the City Administrator, reorganize the department.

Finally, unless the Charter or specific sections of the Municipal Code expressly provide otherwise, the department head is not required to seek commission approval before signing contracts and making other decisions on behalf of the department. (A memorandum addressing the role of the Elections Commission in awarding contracts, dated November 19, 2003, is attached.) We recommend that each commission and department head jointly determine which contracting and other matters require commission consideration and approval.

**V. RESTRICTIONS ON COMMISSIONS AND INDIVIDUAL COMMISSIONERS:
PROHIBITING INTERFERENCE WITH ADMINISTRATIVE AFFAIRS**

A. Restrictions on Commissions

Although the Charter confers broad authority to commissions to set policy and oversee the operations of their departments, the Charter also restricts how a commission may deal with the administrative affairs of its department, as follows:

Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's power of hearing or inquiry as provided in this Charter.

Charter § 4.102. This restriction establishes a chain of command that governs the operation of departments under commissions. The commission sets policy and communicates that policy to the department head, who in turn is responsible for its execution. *City Attorney Opinion 90-01*, p. 2. As we stated in a 1990 Opinion:

[T]here is no prohibition...against a commission dictating administrative policy for its department, so long as the board or commission proceeds in the manner provided by the charter...[a] board or commission may act only at a noticed meeting attended by a quorum of the commission or its committees, and only by means of a vote of the commission or its committees. So long as a commission complies with these Charter requirements, it enjoys a broad authority to address administrative matters within its own department.

City Attorney Opinion 90-01, p. 3.

The requirement that a commission deal with administrative matters solely through the department head does *not* apply to actions taken through the commission's power of hearing or inquiry. Charter § 4.102. "The commission's power of inquiry includes the authority to call any department officer or employee before the commission to answer questions regarding the operations of the department. But if the commission wants to make changes in departmental operations as a result of those inquiries, it must still address its directives to the department's chief executive officer." *City Attorney Opinion 90-01*, p. 4.

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B. Restrictions on Individual Commission Members

Individual commission members lack the authority to exercise powers of the commission *as individuals*. Charter §§ 4.102, 4.104, Govt. Code §§ 54953, 54952.6. Although commissions may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting information on the program to the commission, individual commissioners may not otherwise act on behalf of the commission without the commission's express authorization.

In addition, as indicated above, Charter section 4.102 provides that "any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct . . ." Accordingly, in addition to requiring that a commission deal with administrative matters solely through the department head or his or her designees, section 4.102 prohibits *individual members* of boards and commissions from dictating, suggesting or interfering in administrative matters. *City Attorney Opinion* 90-01. The prohibition does not prevent individual commissioners from seeking information from the department head about the department's operations. Further, *with the department head's consent*, commissioners may also seek information from department staff.

Finally, commissioners should be aware that they are subject to restrictions on their political and other outside activities, and to State and local conflict of interest laws. A separate memorandum, included with the materials for the July 22, 2005 retreat, addresses the restrictions on political and other outside activities, and the City Attorney's *Good Government Guide: An Overview of the Laws Governing the Conduct of Public Officials* summarizes applicable conflict of interest laws. Please contact me if you have any questions about these laws and rules.

VI. THE RESPECTIVE ROLES OF THE ELECTIONS COMMISSION AND DIRECTOR OF ELECTIONS

As discussed above, there are numerous rules and requirements that govern the Elections Commission and Department of Elections. Nonetheless, these rules and requirements do not address every situation and contingency. From time to time, questions arise concerning the respective roles and responsibilities of the Commission and Director that cannot be answered by reference to the Charter or other laws. Under these circumstances, the Commission and Director should discuss and reach agreement concerning which matters require commission consideration and approval.

J.A.M.

cc: John Arntz
Shirley Rodrigues