

August 28, 2001

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSED PILOT PROGRAM FOR USE OF INDEPENDENT BUDGET ANALYST BY  
CITY COUNCIL

### INTRODUCTION

During the budget process for Fiscal Year 2002, the members of the City Council determined that they could enhance their ability to make informed budgetary decisions if they were aided by an independent analyst. The Council included in the Fiscal Year 2002 Annual Appropriation Ordinance (Ordinance No. 0-18964 adopted on July 24, 2001), a \$100,000 appropriation in the General Fund Citywide Program Expenditures for a City Council Budget Liaison.

In a memorandum to the Rules Committee, dated July 19, 2001, Councilmember Scott Peters outlined his goals for a program that would use the services of an independent budget analyst for the Council. The Rules Committee, after discussing this proposal, directed the City Auditor and Comptroller to develop and propose to Council a process for using an independent budget analyst, appointed from the Auditor's staff, that would achieve the Council's purposes. The Auditor has developed such a proposal, which is set forth in the memorandum dated August 3, 2001, and attached to this Report as Attachment 1. The Auditor has asked that this Office opine on the legality of this proposed program, with respect to the separation of powers and duties between the Council and the City Manager mandated by City Charter sections 22 and 28, as explained in *Hubbard v. City of San Diego*, 55 Cal. App. 3d 380 (1976).

This Office has reviewed the proposed program. It is our opinion that the program may legally be implemented, although care must be taken to retain the separation of powers as defined in the City Charter. By implementing this program as a pilot program for one year, all parties can evaluate and adjust it as necessary to achieve the Council's purposes in a lawful manner.

### ANALYSIS

As Councilmember Peters' memorandum acknowledges, the process implemented must respect the City Charter division of authority between the Council and Manager, guided by the court's decision in *Hubbard*. A brief overview of that case and the relevant Charter sections will

aid in understanding our analysis and conclusion.

A. The *Hubbard* Case and Charter Sections 22, 28

Charter section 22 provides, in relevant part:

(b) Except for the purpose of inquiry, the Council and its members shall deal with that part of the administrative service for which the City Manager is responsible solely through the City Manager or his designated representative and not through his subordinates.

Charter section 28 broadly defines the scope of the Manager's administrative powers. Included in this list of powers are several that pertain directly to the Manager's status as Chief Budget Officer for the City.

In *Hubbard*, the city council had passed an ordinance which purported to set up a new City department, independent of the Manager, with an independent department head called the "Legislative Analyst," whose duties included many of the budget analysis functions of the Manager. A taxpayer (and former city council member) sued, claiming that the ordinance constituted an impermissible interference in the exclusive powers of the Manager. The court found that the scope of the proposed new city department's powers and duties both duplicated and interfered with the budget-related powers and duties that were assigned by the Charter exclusively to the Manager:

We face the problem of whether the council, under the charter, may create a department of city government not provided for by the charter and remove it from the supervision and control of the manager by designating that department a legislative department without regard to the powers and duties attempted to be given to it.

We hold that the council cannot do so.

The council may not create a department of the city government, by whatever name it is given, which duplicates or infringes upon the specific powers or duties assigned by the charter to another department or, generally, to the manager.

*Hubbard v. City of San Diego*, 55 Cal. App. 3d at 388.

In so finding, however, the court acknowledged that the council should not have to simply accept the manager's representations as to the budget at face value:

The right must be recognized of the council as a body, and of each member of the council, to employ one or more assistants to do clerical, research, analytical, reporting and communications work to facilitate the performance of the duties of the legislative body and its members.

Included in that category would be agents to obtain desired information from the manager, and to analyze it and the proposed budget for the benefit of the members of the council individually or collectively.

Such agents or employees would be only representatives of the council or its members operating in extension. Such representatives, acting on the initiative and under the direction of the council or its members, clearly differ from a department of the City working on its own initiative and with its own administrative head, and in its internal administration independent of both council and manager.

*Hubbard*, 55 Cal. App. 3d at 390. Thus, the *Hubbard* court acknowledged that there is a legitimate role for a budget analyst to perform on behalf of the Council. The key to implementing any proposal that involves persons other than the Manager or his staff in the budget process is to ensure that those other persons are not duplicating or interfering with the duties that fall exclusively to the Manager.

#### B. The Auditor's Proposed Process

The proposal prepared by the Auditor does not pose the same problems as did the ordinance in *Hubbard*. The process focuses on identifying the Council's policy issues related to the selected department, then setting up a cooperative forum for discussion and exchange of information and ideas that can be analyzed by the independent analyst on behalf of the appointed council members. From those discussions would follow a series of informed recommendations made by the appointed councilmembers to the Rules Committee, and then to the full Council, on how to coordinate their policy goals for a particular department with the budget decisions they make once the Manager presents his budget in accordance with the Charter.

Unlike the unlawful ordinance in *Hubbard*, this proposed process does not remove or duplicate any functions of the Manager. The Manager still has control over his administrative departments and their functions, and as proposed he is also given the opportunity to augment his own budgetary functions with a role in this process. The appointed councilmembers and their independent analyst will not be directing the managerial employees or restricting or duplicating their work, but rather will be inquiring (which is expressly allowed by Charter section 22), and independently assessing the information received from those inquiries. Both are functions that the *Hubbard* court noted were within the Council's "rights," the exercise of which did not violate the separation of powers doctrine.

During the course of the discussions and exchanges that are at the heart of this process, instances may occur that raise the separation of powers issue. For example, steps 4, 5, 6, and 7 will require regular interaction between the appointed councilmembers and City staff. Bearing in mind the provisions of Charter section 22(b), those interactions should be for purposes of inquiry, not direction. Further, step 8 in the process calls for the working group to reach conclusions "for purposes of policy direction." The recommendations that come from this process should be based on the team's enhanced understanding of the department that has been studied, and should focus on actions the Council may either take themselves, or else direct the

Manager, and not his staff or subordinates, to take.

### **CONCLUSION**

As a pilot program, this effort will allow the Council, Manager, and Auditor to ascertain whether the program effectively meets the Council's goal of establishing "a more active link" between the policies set by the Council and the budget approved each year to advance those policies. The process may legally be implemented, provided all parties maintain an awareness of the need to keep their activities within their respective parameters set by the Charter. This Office will advise all parties on an ongoing basis to assist them in successfully implementing the program.

Respectfully submitted,

/ S /

CASEY GWINN  
City Attorney

TCM:lb  
cc: Ed Ryan  
Attachment  
RC-2001-24