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REPORT TO THE COMMITTEE ON
GOVERNMENT EFFICIENCY AND OPENNESS

DRAFT REVISIONS TO COUNCIL POLICY 000-13
PROCEDURES FOR MAYOR AND COUNCIL APPOINTMENTS

INTRODUCTION

At the request of the Committee on Government Efficiency and Openness [Committee], on April 11, 2005, the City Attorney presented a report on compliance with San Diego City Charter [Charter] section 42. That Charter section requires the City Council to “take into consideration sex, race, and geographical area so that the membership of such commissions, boards, committees or panels shall reflect the entire community.”¹ After public testimony and committee discussion, the Committee requested that this Office provide non-discrimination language that could be added to the current policy implementing Charter section 42 and to analyze procedures to provide additional information to the City Council and the public during the appointment process. The Committee specified eight areas for additional information and analysis. These items and responses are described below. Proposed revisions to Council Policy 000-13 are attached as Attachment 1.

DISCUSSION

1. Add non-discrimination language to current policy regarding age, sexual orientation, and ability.

Council Policy 000-13 sets forth the procedures for Mayoral and Council appointments. The policy currently implements Charter section 42 by requiring that the City Council take into consideration the sex, race, and geographical area of an appointee so that membership in the board or commission reflects the entire community. The current policy does not contain any non-discrimination language. Accordingly, the following language is proposed to be added to Council Policy 000-13:

¹ Although this is not a mandatory requirement, the appointing authority is required to use his or her best efforts in achieving the diversity goals. *See* City Att’y Report No. RC-2005-6 (Apr. 7, 2005).

Appointments to commissions, boards, committees, or panels shall be made without discrimination on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, unless any such factor is a requirement specified by the City Council as a necessary means to fulfill the purpose of such commission, board, committee, or panel.

The proposed policy has an exception to the non-discrimination provision because the City has some boards and commissions with specific requirements that could not otherwise be met. For example, the Citizens' Equal Opportunity Commission specifies that the Board "shall include one representative from each of the following minority groups: Latino, African-American, Filipino, American Indian, Asian/Pacific Islander, Disabled, and Lesbian/Gay/Bisexual/Transgender. San Diego Municipal Code [SDMC] § 26.16. There also are age requirements for some members of the Senior Affairs Advisory Board and the City of San Diego Youth Commission. Accordingly, an exception to the non-discrimination requirement is necessary for certain types of boards and commissions.

2. Provide an overview report of the appointment process from start to finish.

The appointment process is outlined in Council Policy 000-13. The process varies depending on whether it is a mayoral appointment or a council appointment. When a vacancy occurs or is expected to occur on a commission or advisory body to which the Mayor has the power of appointment, the Mayor must notify each member of the City Council by memorandum of such vacancy and request nominees for the Mayor's consideration. Each City Councilmember may, but is not required to, submit the name of one nominee, with supporting information, to the Mayor within thirty days after receiving the notification of the vacancy.

At the close of the thirty day response period, the Mayor then places the matter of the appointee on the next regularly scheduled City Council meeting docket. The appointee must, if a majority of City Councilmembers agree, appear before the City Council. The City Council must confirm or deny the Mayor's recommended appointee to the vacant position. If the confirmation of the Mayor's recommended appointee is denied, the Mayor must cause to be placed on the next regularly scheduled City Council meeting docket the matter of the Mayor's appointment to fill the vacant position.

When a vacancy occurs or is expected to occur on a commission or advisory body to which the City Council has the power of appointment, the City Clerk must notify each member of the City Council by memorandum of such vacancy or expected vacancy and request that City Councilmembers submit to the Mayor within thirty days the name of one nominee to fill the vacancy, together with any information in support of the nominee. Notice is effective upon receipt of the City Clerk's memorandum, as indicated by the City Council office time and date stamp.

The Mayor then notifies the City Council by memorandum of the nominees to fill the vacancy. No earlier than one week after the issuance of the memorandum, the Mayor must cause to be placed on the next available Adoption Agenda of a regularly scheduled City Council meeting the matter of discussion by the Council of the nominees. The City Council must consider all such nominees and select a nominee to fill the vacancy.

Council Policy 000-13 also provides that, after appointment, the Mayor is required to inform the appointee of the requirement to take the oath of office at the City Clerk's office and to file a statement of economic interests reporting form if disclosure is required for the position. The policy also specifies similar responsibilities for the City Clerk and the new appointee.

In addition to the Council Policy procedures, we are advised that the Mayor's Office and the Clerk's Office work together to ensure that vacancies are filled in a timely manner, although those offices are better equipped to provide a description of their procedures. With respect to the City Attorney's Office, our procedures include reviewing the request for Council Action and any legal issues regarding the appointment, such as term limits and qualification requirements. Our Office also conducts a background check on appointees to boards and commissions whose members are required to file a statement of economic interest. Finally, our Office prepares a resolution to document the City Council's appointment or confirmation of the appointment.

3. Provide an analysis of the possibility of adding a designated Community Planners Committee seat to the Planning Commission.

Charter section 41 provides that the Planning Commission shall consist of seven members appointed by the Mayor, subject to the confirmation of the City Council. Because the Planning Commission is subject to State law and provisions of the Charter, the issues identified by the Committee in this item 3, and in items 4 and 5 below, require additional analysis and will be addressed in a separate report to be provided to the Committee.

4. Provide an analysis regarding the implementation of an attendance and recusal policy for City boards and commissions.

The Charter does not contain a standard attendance requirement for boards and commissions but some attendance policies can be found in the SDMC sections concerning a particular board or commission. For example, any member missing three or more consecutive meetings of the Citizens Advisory Board on Police/Community Relations must forfeit membership on the Board unless good and valid reasons for such absences are presented to and approved by the Council. SDMC § 26.0802. Attendance requirements also exist for the Human Relations Commission and the Public Utilities Advisory Commission. SDMC § 26.0910(b) and § 26.1102, respectively.

The authority to remove a member of a board or commission remains with the City Council. In general, the City Council has the authority to remove committee and board members by vote of a majority of the members of the City Council. *See* Charter section 41 and 43(c). However, a member of the Civil Service Commission may only be removed for cause with a two-thirds vote of the members of the City Council. *See* Charter section 41. Because a minimum attendance requirement for members of boards and commissions would provide useful guidance, we have drafted the following proposed language to be added to Council Policy 000-13:

Unless otherwise specified by ordinance, each member of any commission, board, committee, or panel, shall be subject to the following attendance requirements. Any member missing three (3) or more consecutive meetings, or one-third of all the regular scheduled meetings during the calendar year, shall forfeit membership on such commission, board, committee, or panel unless good and valid reasons for such absences are presented to and approved by a majority of the members of the City Council.

With respect to a recusal policy, it is our understanding that the Committee is concerned about appointees who must regularly recuse themselves due to conflicts, especially when the board may need the member for a quorum and to take action on an item. We also understand that this issue has primarily been of concern for the Planning Commission because there are only seven members, and such members frequently have conflicts that require recusal. Accordingly, this issue will be addressed in a subsequent report dealing exclusively with the Planning Commission concerns identified by this Committee.

5. Examine the possibility of adding members who serve as “alternates” for existing Planning Commission members who are absent or must recuse themselves from voting on particular issues.

The issue of alternates will be addressed in a subsequent report together with items 3 and 4 above, as those issues relate to the Planning Commission.

6. Analyze requiring that memorandums from the Mayor regarding appointees include the community and district in which the appointee resides, and the same information should be provided for the existing members of the board or commissions.

Items 6-8 specify the information the City Council and the public would like to receive prior to confirming an appointee. In particular, item 6 suggests that the City Council be informed of the residence of the appointee and current members to help ensure geographical diversity on the board or commission. Item 7 suggests that occupational information be provided to the City Council and item 8 suggests that the information be made available to the public.

We are advised that the Mayor and Clerk's Office presently work together to provide information to the City Council regarding the area of residence of appointees and current members of the City's boards and commissions. An example of that information is included as Attachment 2 and can be found on the City Clerk's website at <http://www.sandiego.gov/city-clerk/boards-commissions/>. In addition, the appointee's area of residence is included by the Mayor's Office on the Request for Council Action and by the City Attorney's Office on the resolution submitted in connection with the proposed action. To formalize the requirement to provide this information to the City Council, we have attached a proposed revision to Council Policy 000-13:

The Council shall comply with the charge contained in Charter Section 42 to "take into consideration sex, race, and geographical area so that the membership of such commissions, boards, committees or panels shall reflect the entire community." *In that regard, the Mayor shall ensure that the information before the City Council includes: (1) the community and Council District where the nominee or appointee resides; (2) a list of the current members of such commission, board, committee, or panel that includes the community and Council District where each member resides; and (3) the current or past occupation of the nominee or appointee, and of each current member of such commission, board, committee, or panel. This information also shall be made available to the public.* (New language in italics).

The above language also addresses the concerns identified in items 7 and 8 below.

7. Analyze requiring that memorandums from the Mayor regarding appointees include the occupation of the appointee, and the same information should be provided for the existing members of the board or commissions.

See response to item 6 above. We are advised that the current or former occupation of a proposed appointee often is included in the resumes and other information provided to the City Council. Nonetheless, the proposed revisions to Council Policy 000-13 formalize that process by specifying that information regarding an appointee's and current members' former or current occupation will be made available to the City Council.

8. Analyze requiring that memorandums from the Mayor regarding appointees shall have the same distribution to the public as City Manager's reports.

See response to item 6 above. The proposed revisions to Council Policy 000-13 provide that the information relating to the appointee's and members' area of residence and occupation will be made available to the public.

CONCLUSION

City Charter section 42 has the objective of providing the City with diverse representation of citizens on its boards, commissions, committees, and panels. The City has implemented informal procedures to provide certain information to the City Council in connection with appointments to boards and commission. The attached revisions to Council Policy 000-13 will help formalize the process. Finally, the unique issues raised with respect to the Planning Commission will be addressed in a separate report.

Respectfully submitted,

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Attachments
RC-2005-17