

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Michael J. Aguirre**  
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

February 1, 2006

REPORT TO THE RULES, OPEN GOVERNMENT,  
AND INTERGOVERNMENTAL RELATIONS COMMITTEE

REVISIONS TO COUNCIL POLICY 000-13

**INTRODUCTION**

At the request of the Committee on Government Efficiency and Openness [GE&O], on April 11, 2005, the City Attorney presented a report on compliance with San Diego City Charter section 42 regarding the selection of appointees to boards and commissions. After public testimony and committee discussion, GE&O requested that this Office provide non-discrimination language that could be added to Council Policy 000-13 and analyze procedures to provide additional information to the City Council and the public during the appointment process. GE&O specified eight areas for additional information and analysis. In a report dated June 22, 2005, this Office responded with analysis and proposed revisions to Council Policy 000-13 to address the GE&O requests. City Att'y Report No. 2005-17 (June 22, 2005).

In the course of drafting proposed revisions to Council Policy 000-13 in line with the recommendations in the June 22, 2005, report, it became apparent that additional revisions would be necessary in order to accommodate the changes created by the transition to the Mayor-Council form of government. *See*, San Diego Charter Art. XV. In addition, it became clear that further revisions to Council Policy 000-13 were necessary to correct typographical errors and grammatical inconsistencies, and to provide a much more user-friendly, comprehensive document. These suggested revisions are described below. The currently existing Council Policy 000-13, a proposed revised version of Council Policy 000-13, and a strike-out version of Council Policy 000-13 are attached as Attachments 1, 2, and 3, respectively.

**DISCUSSION**

**I. Revisions to Council Policy 000-13 in accordance with the suggestions of GE&O, as described in City Attorney Report No. RC-2005-17.**

In accordance with the suggestions of GE&O, proposed revisions to Council Policy 000-13 include: (1) the addition of non-discrimination language; (2) a clearly outlined "start to finish" appointment process; (3) an attendance policy to govern in the absence of a defined attendance policy in the governing documents of the individual board, commission, or advisory body; (4) and a requirement that memoranda appointing new members include

information regarding the community and district in which the nominee resides, as well as the nominee's occupation, and that such information shall be made available to the public. A thorough discussion of the legal issues and requirements surrounding each of these proposed revisions can be found in City Attorney Report No. RC-2005-17, dated June 22, 2005, available at: <http://www.sandiego.gov/citycouncil/committees/geo/pdf/draftrevisionspolicy000-13.pdf>.

## **II. Delineation of Mayoral and Council appointments and providing for involvement of each in the nomination process in accordance with the Mayor-Council form of Government.**

The current San Diego City Charter includes the Mayor as a member of a nine person City Council. San Diego Charter §§ 12(a) and 24. Charter article XV, which establishes the Mayor-Council form of government [Mayor-Council] effective January 1, 2006, is effective for five years, unless earlier repealed, amended, or extended. San Diego Charter § 260. Under the new article XV, the Mayor is the Chief Executive Officer of the City. San Diego Charter § 265(b)(1). The Mayor no longer is a member of the City Council. San Diego Charter §§ 260(b); 265(b)(1), (4)-(5); 270; and 280(a). The City Council becomes an eight-member legislative body, chaired by a presiding officer. San Diego Charter § 270(a) and (d).

Council Policy 000-13 was created, and subsequently amended, during a period of time when the Mayor served as a member and chair of a nine-member City Council. Due to this fact, the appointment procedures laid out in Council Policy 000-13 assume that the Mayor is part of the Council. This assumption causes difficulties when trying to make sense of the Council Policy in light of the Mayor-Council changes. For example, in the case of those boards to which the Council has power of appointment, the current Council Policy requests that each Council member submit the names of nominees to fill vacancies to the Mayor and the Mayor, in turn, notify Council members of all potential nominees to fill vacancies. This procedure presupposes that the Mayor, as a member of the Council, will have his or her nominees included in the list of all potential nominees, which has been the intent of the Council Policy. When read in conjunction with Charter article XV, this procedure no longer effectuates that intent because the Mayor is no longer a member of the Council. Due to the removal of the Mayor from the City Council, specific provision must now be made in order to preserve the intent of the Mayor and Council that each shall have the ability to suggest nominees to fill vacancies on boards, commissions, and other advisory bodies.

The revised Council Policy 000-13 clearly separates the procedures for Mayoral appointment subject to Council confirmation and Council Appointment. This provides a framework for laying out every step of the process for each type of appointment and avoids any confusion about the roles that the Mayor and Council play in light of the Mayor-Council changes. Charter article XV retains for the Mayor his current "authority to appoint members of City boards, commissions, and committees, subject to City Council confirmation" as provided in Charter sections 41 and 43.<sup>1</sup> The substantive changes to the section on Mayoral appointment

subject to Council confirmation are: (1) the City Clerk shall notify the Mayor and Council of vacancies, rather than the Mayor shall notify Council, in order to bring the Council Policy in line with the current procedures the City follows in order to comply with California Government Code sections 54970 through 54974; (2) the Council President, rather than the Mayor, shall cause the matter of the Mayor's appointment to be placed on the docket in order to express the docketing procedure under Mayor-Council; and (3) addition of language from Charter section 43(c), which provides that if the Mayor does not make an appointment within 45 days after a vacancy occurs the Council shall make such appointments.

Charter section 43(c) provide one of the two ways the Council may make an appointment to a board, commission, or advisory body; the other being an express provision in the Charter, an ordinance, or other controlling law that gives to the Council power of appointment.<sup>2</sup> The substantive addition to the Council Policy 000-13 section on City Council appointments is that the Mayor and Council members may submit to the Council President, rather than the Mayor, the name of one nominee to fill each vacancy, which reflects the new role of the Council President as chair of the Council.

### **III. Conforming the duties of the Mayor and Council to the provisions Mayor-Council form of governance.**

Additional changes are suggested in order to bring Council Policy 000-13 in line with the City Council meeting procedures under the Mayor-Council form of government. These changes primarily consist of changing "Mayor" to "Council President" whenever referring to the person in charge of docketing an item or the person in charge of chairing a City Council meeting. While the Mayor performed these functions pre-Mayor-Council, the Council President now performs these functions.

### **IV. The Mayor's approval or veto process.**

The last substantive addition to Council Policy 000-13 is the addition of a section referring to the Mayor's approval or veto process. Under Charter article XV, the Mayor has veto power over all Council resolutions appointing members to boards, commissions, and advisory bodies. The new Council Policy 000-13 section makes note of this veto power and references the applicable Charter procedures while confirming that nothing in the Council Policy should be

---

<sup>2</sup>Charter section 265(b)(13) provides the Mayor with the "[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."

interpreted or applied so as to create any power or duty in conflict with the approval or veto provisions of the Charter.

**V. Correction of typographical errors and grammatical inconsistencies, as well as reformatting Council Policy 000-13.**

After the addition of both the provisions suggested by GE&O and the changes necessitated by the Mayor-Council form of government, it became apparent that minor, non-substantive adjustments to Council Policy 000-13 would greatly aid in creating a user-friendly, comprehensive document. These changes eliminate typographical errors; help create a more readable document through precise and efficient word choice; eliminate grammatical inconsistencies; and create a better organizational structure within the policy.

Beyond the basic typographical and grammatical changes, the policy has been reformatted and reorganized to make the policy information easily accessible. Under the section labeled “POLICY,” there are now four defined subsections: (1) Mayoral appointment with Council confirmation, (2) City Council appointment, (3) selection procedure for City Council appointments, and (4) general policies relating to appointments. Each of the first three subsections contains information related only to the subject of the subsection, while the fourth subsection contains information relevant to all appointments, regardless of the type of appointment. Information relevant to all appointments, which was once dispersed throughout the policy, is now easy to find because it is wholly contained within the subsection titled “general policies relating to appointments.” This subsection now includes the following policy information: (1) non-discrimination policy and geographical diversity, (2) non-residents of the City, (3) term of service, (4) attendance requirement, (5) notice of vacancies, and (6) mayoral approval or veto process.

**CONCLUSION**

The GE&O suggested changes to Council Policy 000-13 that would formalize several informal procedures related to the appointment of citizens to boards, commissions, and advisory bodies, as well as the addition of new procedures that would ensure information relating to diversity of those advisory bodies is available during the appointment process. Several additional changes to Council Policy 000-13 became necessary in order to bring the policy in line with the changes brought about by the Mayor-Council form of government. Finally, after completing the necessary additions and revisions, it became apparent that non-substantive changes, such as

correcting typographical errors and grammatical inconsistencies and reformatting, would greatly add to the readability and user-friendly nature of the policy. The attached revisions to Council Policy 000-13 will incorporate all of the above.

Respectfully submitted,

MICHAEL J. AGUIRRE  
City Attorney

MJA:SR:jb  
Attachments  
RC-2006-4