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February 28, 2006

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

**APPOINTMENT AUTHORITY TO BOARDS, COMMISSIONS, CORPORATIONS, AND
AGENCIES UNDER THE MAYOR-COUNCIL FORM OF GOVERNMENT**

INTRODUCTION

On February 8, 2006, the City Attorney presented a report to the Rules, Open Government, and Intergovernmental Relations Committee [Committee] regarding revisions to Council Policy 000-13, "Procedure for Mayor and Council Appointments," to reflect the transition to the Mayor-Council form of government. City Att'y Report No. 2006-4. The report was accompanied by a list of the appointment authority for some of the City's boards and commissions. This report provides additional analysis of the appointment authority to certain City Corporations, agencies, authorities, and other panels to the extent such analyses have been completed. The report is organized as follows:

- Part I: Addresses the appointment authority for those corporations in which the City of San Diego is the sole member. In this report we address Centre City Development Corporation, Inc. [CCDC]; San Diego Convention Center Corporation, Inc. [SDCCC]; San Diego Data Processing Corporation, Inc. [SDDPC]; and Southeast Economic Development Corporation, Inc. [SEDC].
- Part II Addresses other corporations or companies reviewed to date in which the City has an interest.
- Part III Addresses the appointment process to some of the other entities that were not included in the February 8, 2006, City Attorney Report.

The summarized results of this report are found in the attachment, a revised version of the list provided to the Committee with the February 8, 2006, City Attorney Report.

DISCUSSION

At a municipal election held on November 2, 2004, the voters of the City of San Diego approved Proposition F, thereby adding article XV to the City Charter which changes the City's current Council-Manager form of government to a Mayor-Council form of governance on a five-year trial basis beginning January 1, 2006. The new form of governance divides City government into two parts, creating a system of checks and balances: an executive-administrative branch headed by the elected Mayor; and a legislative branch headed by the City Council.

Under the new form of governance, the Mayor is recognized as the official head of the City for the signing of all legal instruments and documents. San Diego Charter § 265(a). The Mayor is now the chief executive officer of the City with the authority to execute and enforce all laws, ordinances, and policies of the City. San Diego Charter §§ 265(b)(1) and (2). The Mayor is no longer a member of the City Council, but may attend and be heard at City Council meetings. The City Council now is an eight-member legislative body, chaired by the Council President. San Diego Charter § 270(a) and (d). The City Council's substantive acts still must occur by ordinance or resolution. San Diego Charter § 270(c). The Mayor must approve or veto most City Council resolutions or ordinances passed at open City Council meetings. San Diego Charter §§ 260(b); 265(b)(1), (4), and (5); 270; and 280(a).

With respect to appointments to boards and commissions, the Charter amendments retained the Mayor's "authority to appoint members of City boards, commissions, and committees, subject to Council confirmation" as provided for in San Diego Charter sections 41 and 43. San Diego Charter § 265(b)(12). The City Council also 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 City 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).

A new addition to the Charter is 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)(13). The Charter amendments did not specifically address the appointing authority to entities such as City corporations, and other entities where the "controlling law" is not clear. These matters can be complex. This report reflects our best efforts to interpret the appointments' authority regarding the City corporate boards and other entities where the controlling law is not always clear.

I. CITY CORPORATIONS

A. STATE LAW AND THE CITY CHARTER.

Over the years, the City Council of San Diego [City Council] authorized the creation of corporations under the California Nonprofit Public Benefit Corporation Law. Cal. Corp. Code §§ 5110-6910. State law permits such corporations to have members, or not, as specified in their articles of incorporation or bylaws. Cal. Corp. Code § 5310. It also requires them to have a board of directors, and sets the maximum terms such directors may serve. Cal. Corp. Code §§ 5210, 5220. The law authorizes the articles of incorporation or bylaws of the corporation to specify how vacancies on the corporate boards are to be filled, what qualifications directors must meet, and how directors may be removed, subject to certain minimum requirements under the state law. Cal. Corp. Code §§ 5220-5222.

A corporate "member" is any person with the right to vote for the election of directors of the corporation. Cal. Corp. Code §§ 5049, 5056. State law also requires that corporations, which

do have voting members, provide reasonable nomination and election procedures for their directors given the nature, size, and of the corporation. Cal. Corp. Code § 5520.

Each of the four corporations under discussion names the City of San Diego as its sole member, responsible for the election of the corporate directors. Each of the bylaws of the corporations specifies that the City-member acts through the City Council, in accordance with the City Charter, state, and local laws. The bylaws of three of the corporations currently provide that the corporate directors be elected by the City Council.¹ The bylaws of these nonprofit corporations also require the City Council to act in accordance with the Charter. Because the bylaws do not contemplate the Mayor-Council form of governance, the state law and City Charter need to be reconciled with respect to the appointing authority.

As noted above, the Charter provides that the Mayor has “[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)(13). The California Corporations Code, arguably the “controlling law,” does not vest the power of appointment in any given official or the City Council; it merely permits the bylaws to specify how board vacancies are filled. *See* Cal. Corp. Code § 5220.

The City of San Diego, as the “member,” has the right to “vote”² for the directors to these boards, in accordance with a reasonable nomination and election process. Cal. Corp. Code §§ 5056, 5520. To reconcile the state corporations’ laws and the Charter’s Mayor-Council form of governance, we believe both the Mayor and the City Council should be involved in the process of electing the board of directors of City corporations. We take into consideration the Charter’s apparent intent to vest appointing authority in the Mayor absent “controlling law,” Harmonizing that right with the right of the City to vote for corporate directors, we conclude that the Mayor has the appointment authority under the Charter, subject to the vote of the City Council confirming that appointment, for the three City corporations which have not delegated their voting rights, namely CCDC, SDCCC, and SEDC.

Given the nature of these three City corporations, we conclude that the nomination and voting procedures suggested in the proposed revisions of Council Policy 000-13 for mayoral appointment with City Council confirmation meet the reasonable nomination and election procedures required under the Corporations Code. The City Attorney also recommends a review of the articles and bylaws of each of the City corporations to determine what, if any, revisions might be advisable.

A brief review of each of the four City corporations follows.

¹ The City has previously delegated all authority to act in connection with SDDPC to the City Manager. The Mayor assumed those responsibilities with the change in government.

² A non-natural-person member, such as the City of San Diego, may also delegate voting rights. *See* Cal. Corp. Code § 5056(c)

B. THE CITY CORPORATIONS.

1. Centre City Development Corporation, Inc. [CCDC]

CCDC was incorporated as a nonprofit corporation in 1975, with the City of San Diego, a municipal corporation, as its sole member. Articles of Incorporation [Art. Incorpor.], art. VI. The primary purpose of the corporation is to provide redevelopment services by contract with the Redevelopment Agency of the City of San Diego. Art. Incorpor., art II, § 1. The current amended and restated corporate bylaws [Bylaws] were adopted in November 1995 by the City Council by San Diego Resolution R-286582. The Bylaws require the City, as sole member, to “act through its City Council” and to elect the seven-member Board of Directors at a regular City Council meeting. Bylaws, art II, §§ 1, 2; also *See* Bylaws, art. III §§ 2, 3(1). The Bylaws also require the member to adopt a nomination and election procedure to elect directors that complies with Corporations Code section 5520. Bylaws, art. III § 3(1). The City Council must also act in accordance with the City Charter and state and local laws. Bylaws, art. II § 1.

Directors serve three-year terms and hold office until their successor is elected. Bylaws, art. III § 3 (1). Directors may be removed by a two-thirds vote of Council and a vacancy created by death, resignation or removal. A vacancy not filled within 30 days may be filled by majority vote of the remaining directors. Bylaws, art. III § 3 (2). The City Manager and any member of the City Council have the right to attend and be heard at any meeting of the board or any committee and to make recommendations, but have no voting rights. Bylaws, art. III § 10.

2. San Diego Convention Center Corporation, Inc. [SDCCC]

SDCCC was incorporated as a nonprofit California corporation in 1984, with the City of San Diego, a municipal corporation, as its sole member, acting through the City Council. Art. Incorpor., art. VII; Bylaws, art. II § 1. The City Council is also required to act “in accordance with the City Charter.” Bylaws, art. II § 1.

The purpose of the corporation is to operate and manage the San Diego Convention Center. The Articles of Incorporation and initial Bylaws were adopted and approved by the City Council by San Diego Resolution R-261419 on August 20, 1984.³ The City Council, as member, elects the seven-member board of directors at an annual meeting. Bylaws, art. II §§ 1, 2. The directors serve three-year terms. Bylaws, art. III, §§ 2, 3. Directors may be removed by a two-thirds vote of Council and that vacancy filled by the member or by majority vote of the remaining directors. Bylaws, art. III § 3(2).

The Hotel/Motel Association and the San Diego Convention and Visitors Bureau may each appoint one ex-officio non-voting member. Bylaws, art. III § 2a. The City Manager, and any member of the City Council, may attend and be heard at any meeting of the corporate board or any committee and make recommendations, but have no voting rights. Bylaws, art. III § 10.

³ SDCCC proposed amendments to the Bylaws in 1995 and 2005. Neither was approved by the City Council.

3. San Diego Data Processing Corporation, Inc. [SDDPC]

At the direction of the City Council on January 15, 1979, SDDPC was incorporated as a California nonprofit corporation, with the City of San Diego, a municipal corporation, as its sole member, acting through the City Council, in accordance with the City Charter and state and local laws. Art. Incorpor., art. VI; Bylaws, art. II § 1.

A primary purpose of the corporation is to provide data processing services to the City of San Diego and such other public agencies as the Board of Directors deems appropriate. Art. Incorpor., art. II §§ 1-11. By San Diego resolution R-299444 in July 2004, the City Council delegated its voting authority as the sole member of the corporation over all matters related to SDDPC “without limitation” to the City Manager, and directed the City Manager to change the composition of the seven-member Board of Directors to include three City staff (the City’s Chief Information Officer and two other staff at the Deputy City Manager or Department Director level) and four public members, who must meet specific background requirements.

The City Manager, as the City’s designee, adopted the Fourth Amended and Restated Bylaws on November 15, 2005. The Bylaws permit the City Manager, in lieu of the City Council, to appoint the Board of Directors as the Council specified. Bylaws, art. II § 2; art. III §§ 2-4. The Mayor and any member of the City Council, or their authorized representatives, may attend and be heard at any meeting of the corporate board or any committee and may make recommendations, but have no voting rights. The City Council may designate a council liaison to the Board, who serves in an ex officio capacity. Bylaws, art. III § 12.

San Diego Charter section 260(b) transfers the responsibilities of the Manager to the Mayor, including the requirement he perform the duties “required of him by ordinance or resolution of the Council,” such as those conferred upon him by San Diego Resolution R-299444. Under the authority delegated by the City Council, the Mayor may appoint the Board of Directors to this corporation in accordance with the required specifications.

4. Southeast Economic Development Corporation, Inc. [SEDC]

SEDC was incorporated as a nonprofit California corporation in 1980 with the City of San Diego as its sole member, acting through the City Council. Art. Incorpor., art. VI; Bylaws, art. II, § 1. The City Council is also required to act “in accordance with the City Charter.” Bylaws, art. II § 1.

The purposes of the corporation are to provide economic development services to a specific area of San Diego, and to provide redevelopment services by contract with the San Diego Redevelopment Agency. Art. Incorpor., art. II §§ 1-6.

The original Bylaws were authorized by the City Council by San Diego Resolution R-252889 on October 14, 1980. Members of the Board of Directors are elected at a meeting of the City Council. Bylaws, art. II, § 2; art. III §§ 2, 3(1). The City Council authorized the amendment of article V of the Articles of Incorporation and article III section 2 of the Bylaws in 1983 (San Diego Resolution R-258167) and in 1984 (San Diego Resolution R-260923) to increase the maximum number of directors to eight, then to nine, respectively. Article IV of the

Bylaws was amended by San Diego Resolution R-275940 (June 19, 1990), to change the titles of certain officers of the corporation.

II. OTHER CORPORATIONS AND COMPANIES

A. OTHER NON-PROFIT CORPORATIONS⁴

The Horton Plaza Theatres Foundation, Inc., is a nonprofit public benefit corporation for charitable purposes organized under the California Nonprofit Public Benefit Corporation Law in 1983 to establish, operate, and maintain one or more legitimate theatres in San Diego.

The corporate powers are exercised by a Board of Directors according to the corporate bylaws. Bylaws, art. 3 § 3.1. The 1991 restated Bylaws provide that “the City Council of the City of San Diego shall appoint fifty percent (50%) plus one (1) of the authorized number of directors and the balance shall be appointed by Ernest W. Hahn, Inc.” Bylaws, Art. 3, § 3.3(b). Vacancies on the Board are to “be filled in the same manner as the director whose office is vacant was selected.” Bylaws, Art. 3, § 3.5. The number of Directors can vary from 5 to 35, as set by the Board of Directors. Bylaws, Art. 3, § 3.3 (a).

Consistent with existing procedures, the City Attorney concludes that the Mayor and City Council may submit nominations; and the City Council may appoint the authorized number of corporate directors and fill vacancies to their director positions as they occur. Unlike the previous corporations discussed, the articles of incorporation and bylaws do not designate the City of San Diego as a member and do not *require* any action to be in accord with the City Charter. Although these bylaws do not require action to be in conformance with the City Charter, the City Council must pass a resolution in open session to validly appoint to a vacancy on this Board. To be final, such resolutions must be approved by the Mayor, or he may veto it, subject to City Council override. San Diego Charter §§ 265(b)(5); 280(a).

Because these bylaws did not contemplate the change in the City’s governance, the corporate board may want to consider whether any change in the Mayor’s role is appropriate.

B. LIMITED LIABILITY COMPANIES

San Diego Medical Services Enterprise, LLC. [SDMSE] is a limited liability company [LLC] formed pursuant to the Beverly-Killea Limited Liability Company Act (Cal. Corp. Code § 17000, *et seq.*) in 1997 between its two members, the City of San Diego and Rural/Metro of San Diego, Inc. Its purpose is to provide and coordinate the City’s needs for emergency medical and medical transportation services. The company is to continue until 2008, and is governed by the terms of the Third Amended and Restated Operating Agreement [Agreement] adopted by the City Council in November 2004 by San Diego Resolution R-299840.

SDMSE is managed by five representatives of the two members called Managers. Agreement, art.5 § 5.1. By the terms of the Agreement, the City of San Diego acts through its

⁴ The City Attorney is still reviewing other nonprofit corporations in which the City may have an interest in director appointments.

City Manager to appoint three of the five managers, two of whom must be employees of the San Diego Fire Department. Agreement, art.5 § 5.2. Vacancies in the office of Manager are to be filled by the member or member's designee with appointment power over the vacant office. Agreement, art. 5 § 5.11(a).

San Diego Charter section 260(b) transfers the responsibilities of the Manager to the Mayor, including the requirement he perform the duties "required of him by ordinance or resolution of the Council," such as those conferred by San Diego Resolution R-299840, adopting the operating agreement of this company. By operation of the Charter amendments, the Mayor assumes the Manager's designated authority to appoint the three Managers to this company as required by the agreement.

III. OTHER BOARDS, COMMISSIONS, AND AGENCIES

A. CITY COUNCIL APPOINTMENTS SUBJECT TO MAYORAL VETO

1. San Diego Metropolitan Transit System Board [MTS]

This is a regional transportation board created by state statute, and previously was known as the San Diego Metropolitan Transit Board. Cal. Pub. Util. Code § 120050(b). It is governed by a fifteen-member board. Controlling state law requires that the board consist "of 15 members selected as follows: . . . (b) Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the city council." Cal. Pub. Util. Code § 120050.2.

Because state law vests the power to appoint members of this Board in the City Council, San Diego Charter section 265(b)(13) is inapplicable. Pursuant to Council Policy 000-13, the City Council will continue to appoint City representatives to this Board. Because the Mayor is no longer a member of the City Council, effective January 1, 2006, he may not serve as a City representative to this Board. However, because these appointments are accomplished by a Council resolution in open Council session, the Mayor must approve and may veto such resolution. San Diego Charter §§ 265(b)(5); 280 (a).

2. Local Agency Formation Commission [LAFCO]

This is a county-wide, but county-independent, regulatory agency established by state law to discourage urban sprawl and encourage orderly and efficient provision of public services. Cal. Gov't Code §§ 56000 *et. seq.* It consists of eight commissioners whose selection is designated by statute. Cal. Gov't Code § 56325. State law requires that the eighth member of this commission "shall . . . be a member of the legislative body of the city in the county having the largest population, appointed by the legislative body of that city." Cal. Gov't Code § 56328(a).⁵

Because controlling state law vests the power to appoint members of this Board in the City Council as the legislative body of the City, San Diego Charter section 265(b)(13) is

⁵ An alternate member to the commission should also be appointed in the same manner. Cal. Gov't Code § 56328 (b).

inapplicable. Pursuant to Council Policy 000-13, the City Council will continue to appoint City representatives to this Board, all of whom must be members of the City Council. Because the Mayor is no longer a member of the City Council, effective January 1, 2006, he may not serve as a City representative or alternate to this Board. However, because these appointments are accomplished by resolution in open City Council session, the Mayor must approve and may veto such resolution. San Diego Charter §§ 265(b)(5); 280(a).

3. Otay Valley Regional Park Policy Committee [JEPA]

In 1990, the cities of San Diego and Chula Vista, and the County of San Diego established the Otay Valley Regional Park Joint Exercise of Powers Agreement (JEPA). Cal. Gov't Code §§ 6500 *et seq.* The City Council adopted this initial agreement by San Diego Resolution R-275620. On October 10, 2005, the same parties rescinded the previous agreement and executed a revised agreement adopted by the City Council by San Diego Resolution R-300902 to last for 25 years, to address maintenance and operations issues among the jurisdictions. The revised JEPA continues the existence of two committees: the Policy Committee, consisting of three elected officials from the three agencies; and a thirty-member Citizen Advisory Committee appointed by the Policy Committee.

The Policy Committee is selected according to the controlling JEPA agreement, which may be changed if all parties to the agreement concur. The agreement requires "The representative from the City of San Diego . . . be a member of and appointed by the City Council." JEPA Agreement, section 6. Absent a change to the agreement and pursuant to Council Policy 000-13, the City Council will continue to appoint the City representative from its membership. San Diego Charter section 265 (b)(13) is inapplicable because the controlling agreement established under state law "vests the power of appointment with the City Council" Accordingly, the Mayor may not be the representative or alternate to this Board, because he is no longer a member of the City Council. San Diego Charter § 270(a). However, the City Council appoints the representative to this Policy Committee by resolution in open session, and the Mayor must approve or may veto that resolution. San Diego Charter §§ 265(b)(5); 280(a).

4. San Dieguito River Valley Regional Open Space Park [SDRVROSP] Joint Powers Authority

By San Diego Resolution R-273718, June 12, 1989, the City Council approved the establishment of the SDRVROSP Joint Powers Authority [JPA] under California Government Code sections 6500 *et seq.* between the City of San Diego, the County of San Diego and the cities of Del Mar, Escondido, Poway, and Solana Beach as reflected in the JPA agreement. The purpose of the JPA is to acquire, plan, manage, and operate the San Dieguito Open Space Park. The term of the original agreement was for a maximum period of twenty-five years, with an option to continue the JPA for an additional fifty years.

This JPA is governed by a Board as authorized by California Government Code section 6506. The agreement requires in pertinent part that "membership of the Board shall be as follows: "(a) Two (2) elected members of the governing bodies of the County of San Diego and the City of San Diego appointed by their respective governmental bodies" JPA Agreement,

section 5(a). “The elected members . . . serve at the pleasure of their appointing authorities,” and each member “shall have an alternate . . . chosen in the same manner as the regular members.” JPA Agreement, section 5.⁶

Absent any change to the agreement establishing this JPA and pursuant to Council Policy 000-13, the City Council will continue to appoint the City representative and alternate to the JPA governing board. However, the Council appoints the representative and alternate to this agency board by resolution in open session, and the Mayor must approve or may veto that resolution. San Diego Charter §§ 265(b)(5); 280(a).

B. OTHER MAYORAL APPOINTMENTS

1. Citizens Review Board on Police Practices

San Diego Charter section 43(d) gave the City Manager the exclusive authority to create and establish a Citizens Review Board on Police Practices. San Diego Charter section 43 is found in article V of the Charter. The City Manager’s authority and responsibility for this Board has been assumed by the Mayor under San Diego Charter section 260(b), which transfers “[a]ll executive authority, power, and responsibilities conferred upon the City Manager in article V. . .” to the Mayor for the duration of the new form of government. Accordingly, the Mayor assumes exclusive authority to appoint members to this Board.

2. San Diego Regional Airport Authority

The San Diego Regional Airport Authority is a regional local government agency established in 2002 and controlled by state law. Cal. Pub. Util. Code §§ 170000 *et seq.* The authority is governed by a nine-member board of directors. San Diego holds two (2) seats on this board. The administrative policy of the authority is overseen by a three-member executive committee. San Diego appoints one member to the authority’s executive committee.

a. The Mayor appoints Authority Board members

State law requires that the two San Diego representatives on the nine-person board shall be “(1) The Mayor of the City of San Diego, or a member of the city council designated by the mayor to be his or her alternate. (2) A member of the public appointed by the Mayor of the City of San Diego.” Cal. Pub. Util. Code § 170016(a). The statutory scheme is consistent with San Diego Charter section 265(b)(13), which gives the Mayor “[s]ole authority to appoint City representatives to boards, commissions, committees and governmental agencies” Effective January 1, 2006, the Mayor has sole authority to appoint the two City representatives to this nine-person Board.

⁶ There have been two amendments to this agreement which do not impact the appointment of City representatives to the Board. The amendments were made September 24, 1990, and September 15, 2003.

b. The Mayor appoints the executive committee member, subject to City Council approval.

A different section of the statutory scheme explains how the three-member executive committee “shall be appointed.” For San Diego, it requires that “(3) A member of the public . . . shall be appointed by the Mayor of the City of San Diego, and confirmed by a majority vote of the San Diego City Council, who shall be a resident of that city.” Cal. Pub. Util. Code § 170028(b). State law expressly requires the Mayor to have his appointment to the executive committee confirmed by the Council, rendering inapplicable San Diego Charter section 265(b)(13). The Mayor may therefore appoint this committee member, subject to City Council approval.

3. San Diego River Conservancy

The San Diego River Conservancy was established by state law in 2003 to acquire and direct the management of specified public lands in the San Diego River area. The composition, selection, and terms of the eleven-member (nine voting, two non-voting) governing board of the Conservancy is controlled by state law. Cal. Pub. Res. Code §§ 32630 *et seq.* San Diego has two of the voting seats. Controlling state law requires in pertinent part that “[t]he voting members of the board . . . consist of the following: . . . (4) The Mayor of San Diego. . . (5) One member of the City Council of San Diego, elected by a majority of the membership of the council.” Cal. Pub. Res. Code § 32634(b).

Based on the above, the Mayor is provided a seat on this board by state law. A member of the City Council is also provided a seat on this board, after election by the Council. Cal. Pub. Res. Code § 32634 (b). San Diego Charter section 265(b)(13) is inapplicable to this second board seat, because state law vests the power of appointment with the City Council. However, because this appointment is accomplished by resolution in open Council session, the Mayor must approve and may veto such resolution. San Diego Charter §§ 265(b)(5), 280(a).

C. COUNCIL PRESIDENT APPOINTMENTS

The City is certified by the California Integrated Waste Management Board as its own Local Enforcement Agency [LEA]. Cal. Pub. Res. Code §§ 43200 *et seq.* This requires the City to enforce state regulations related to solid waste disposal facilities’ permits, and to provide a hearing for affected parties who wish to contest actions of the LEA. Cal. Pub. Res. Code § 44310. The appointment of this three-member hearing panel is required and controlled by state law. Cal. Pub. Res. Code § 44308.

Public Resources Code section 44308(a) requires the hearing panel be appointed in either of two ways: “(1) The governing body may appoint three of its members as the hearing panel, (2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.” The independent panel members must meet further requirements set forth in section 44308(b). In 1998, by San Diego Resolution R-290036, the City Council decided that the chairperson may appoint an independent hearing panel, known as the Local Enforcement Agency Hearing Panel, Waste Management.

Controlling state law vests the power to appoint the members of this hearing panel in “the chairperson” of the City’s governing body. Cal. Pub. Res. Code § 44308(a)(2). Effective January 1, 2006, the chairperson of the City Council became the Council President. San Diego Charter § 270 (d). Under state law, the Council President assumes the authority to appoint members of this hearing panel. The Charter does not contemplate a separate power for the chairperson of the Council to act independently from the City Council in matters of appointment. Accordingly, the Council President may select the nominee for any vacancy on this panel, as could the Mayor previously, namely, subject to City Council approval. Such appointments are accomplished by City Council resolution in open session, and are subject to Mayoral approval or veto. San Diego Charter §§ 265(b)(5), 280(a).

CONCLUSION

Some of the appointment processes to the various City and outside boards, commissions, agencies, and authorities will be impacted by the change to a Mayor-Council form of governance. The analysis is complicated by new provisions to the Charter that provide the Mayor with additional powers of appointment. Accordingly, this report discusses several of these entities and where the law is not clear, provides our best analysis of the appointment powers. This Office will continue to review other boards, commissions, and agencies over the next few months. In particular, the appointment process to the boards, policy advisory committees, and working groups of the San Diego Regional Transportation Agency also are under review. In the meantime, attached is a list that summarizes the conclusions contained in this report.

Respectfully submitted,

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MJA:jb
Attachment
RC-2006-9