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**REVISED REPORT TO THE COMMITTEE ON PUBLIC  
SAFETY AND NEIGHBORHOOD SERVICES**

**INTENDED MINIMUM STAFFING FOR FIRE ENGINES AND FIRE TRUCKS**

**INTRODUCTION**

On June 30, 2010, the Public Safety and Neighborhood Services Committee (Committee) considered a proposed Council Policy to require staffing of four personnel on all San Diego Fire-Rescue fire engines and fire trucks and requested the Office of the City Attorney to review the proposed Council Policy and draft a resolution for City Council action.

Several issues were raised by staff as well as members of the Committee and directed to this Office for response. Specifically: (1) whether the promulgation of the proposed Council Policy was subject to the meet and confer requirement under the Meyers-Milias Brown Act (MMBA); (2) whether the proposed Council Policy would impermissibly interfere with the executive and administrative powers of the Mayor and Fire Chief as set forth in the San Diego City Charter; and (3) whether the proposed Council Policy, as drafted, could be read to mandate any reversal of the "brown out" present practice of the City, and, if so, whether that similarly interferes with the exclusive executive and administrative powers of the Mayor and Fire Chief as set forth in the Charter.

**DISCUSSION**

**I. MEET AND CONFER**

Ordinarily, staffing is a managerial decision and not subject to decisional bargaining. However, staffing level changes that affect employee safety are excepted and, thus, subject to meet and confer. *Fire Fighters Union v. City of Vallejo*, 12 Cal. 3d 608, 618 (1974). Necessarily, staffing of fire engines and trucks could affect the safety of employees. As such, changes in these staffing levels would be subject to meet and confer. The proposed Council Policy mandating setting forth minimum levels of staffing on trucks and engines at four personnel does not, however, result in a staffing change. Current organizational practice is to staff trucks and engines with four people.<sup>1</sup> As the proposed Council Policy does not result in a change of present staffing,

there is no duty to meet and confer.<sup>2</sup>

## II. POTENTIAL INTERFERENCE OF PROPOSED COUNCIL POLICY WITH EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE MAYOR AND FIRE CHIEF

The City Council or any standing committee thereof may originate draft Council Policy proposals for formal consideration by the City Council. Council Policy 000-01. The stated purpose for a Council Policy is “to guide the various functions of the City and, where necessary, to establish procedures by which functions are performed.” *Background*, Council Policy 000-01.

The proposed Council Policy seemingly mandates, or minimally dictates, staffing levels of the Fire-Rescue Department, specifically the staffing of engines and trucks. This proposed mandate or dictate would violate the City Charter as usurping the exclusively executive function of the Mayor and Fire Chief. Therefore, the Council Policy as proposed would not be enforceable.

The Charter changes occasioned by the “Strong Mayor” form of government provide a separation of powers between the executive branch and the legislative branch, including a system of checks and balances. The Charter gives the Mayor broad administrative authority in planning the activities of the City government and for adjusting such activities to the finances available. Under this “Strong Mayor” form of government, all powers and duties of the previously appointed City Manager were transferred to the Mayor. San Diego Charter §§ 28 and 260. The Mayor is now the City’s chief executive officer, and chief budget and administrative officer. San Diego Charter §§ 260 and 265. The Mayor holds all of the City’s administrative power, and is solely responsible for the day-to-day operations of the City. San Diego Charter §§ 28, 260 and 265. “Administration” is defined as “1. The management or performance of the executive duties of a government, institution, or business. 2. In public law, the practical management and direction of the executive department and its agencies.”<sup>3</sup> “Chief Executive Officer” is defined as “[t]he highest-ranking executive in a company or organization, responsible for carrying out the policies of the board of directors on a day-to-day basis.”<sup>4</sup>

In addition to the Charter provisions vesting the Mayor with exclusive administrative functions and powers which would include general departmental staffing, the Charter provides that the Chief of the Fire-Rescue Department “shall have all power and authority necessary for the operation and control of the Fire Department and the protection of the lives and property of the people of the City from fire.” San Diego Charter § 58. Additionally, “[t]he Chief of the Fire Department, with the approval of the City Manager, shall direct and supervise the personnel.”

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<sup>2</sup> However, materials and reasonable notice were provided to Local 145.

<sup>3</sup> Black’s Law Dictionary (9th Ed. 2009).

<sup>4</sup> See The American Heritage Dictionary of the English Language (4th Ed. 2000).

San Diego Charter § 58. These specific provisions reinforce that the staffing of the Fire-Rescue Department is the administrative responsibility of the Fire Chief and Mayor, not the City Council.

The Charter-mandated separation of powers between the Mayor as the executive branch and the City Council as the legislative branch has been the subject of prior opinions by this Office. These opinions make clear that day-to-day operations of City departments are within the executive branch of government. In City Attorney Opinion 86-7 (November 26, 1986), this Office opined that engaging in contract negotiations, mediation, and resolution of disputes were administrative functions within the exclusive province of the City Manager (now Mayor). In City Attorney Opinion 86-2 (June 23, 1986), this Office opined that the specific allocation and utilization of personnel was within the exclusive province of the executive powers of the City Manager (now Mayor). In City Attorney Opinion 2007-1 (April 6, 2007), this Office opined that direction of day-to-day operations and all administrative matters of the City are exclusively the responsibility of and within the Charter-provided powers of the Strong Mayor.

Although the City Council may not, through a Council Policy, mandate or dictate the administrative operations of a City department, it can nonetheless make its intent and desire clear through one. An example of such accompanies this report.

Further, the City Council can commit to providing, through the budgetary process, resources for staffing to a level consistent with its stated intent.

### **III. LANGUAGE OF PROPOSED COUNCIL POLICY**

A question has also arisen regarding the actual language of the Council Policy and specifically whether that language mandates or otherwise interferes with the “brown outs” of various fire stations.

In several sentences, the proposed Council Policy sets forth language that can be construed as referring to, and expressing dissatisfaction of, the “brown outs.”<sup>5</sup> Inclusion of this language in the proposed Council Policy would not create a legal mandate for the reasons set forth above – that the administrative operations of the Fire-Rescue Department are within the exclusive authority of the Mayor and Fire Chief.

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<sup>5</sup> This Committee previously addressed the issue of “brown outs” on June 30, 2010, as a separate item.

### CONCLUSION

In sum, the promulgation of a Council Policy regarding the staffing of Fire-Rescue engines and trucks with four personnel would not trigger the meet and confer requirement under the MMBA since it would not result in a change in current staffing levels.

The proposed Council Policy cannot be read as a mandate of staffing Fire-Rescue trucks and engines with four personnel as it would violate the Charter by interfering with the executive branch of the City.

While the City Council cannot mandate the staffing, it may state its desire and intent regarding same. In that vein, an alternative proposed Council Policy accompanies this report.

Additionally, the City Council, in the exercise of its legislative and appropriations function, can provide for the funding and resources necessary to facilitate its stated intent of the staffing of Fire-Rescue trucks and engines with four personnel.

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By \_\_\_\_\_  
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Attachments  
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