

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

JOSEPHINE A. KIERNAN
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

Jan I. Goldsmith
CITY ATTORNEY

February 23, 2011

REPORT TO THE COMMITTEE
ON BUDGET AND FINANCE

PUBLIC SERVICES OBLIGATED UNDER THE SAN DIEGO CHARTER

INTRODUCTION

In order to assist the City Council in their discussions regarding the City's budget, the Independent Budget Analyst (IBA) on behalf of the Committee on Budget and Finance has requested this Office to generally identify City services which the City must provide under the San Diego Charter (Charter), San Diego Municipal Code (SDMC or Municipal Code), state and federal laws. The IBA has also requested advice on whether any of these laws require a specific level of service or expenditure of funds for services.

We provide in this Report an overview of the public services the Charter obligates the City to provide, and the Mayor and Council's discretion in setting the level of those services. We also provide some examples of the many federal and state laws that may impact the City's budget, and will provide future guidance in response to specific questions as may be necessary.

DISCUSSION

I. PUBLIC SERVICES¹ TO BE PROVIDED UNDER THE CHARTER

The Charter creates and forms our municipal government, distributing the powers and duties of the various departments, boards and officers, and generally providing the manner in which the powers should be exercised. 2A McQuillin Mun. Corp. § 9:3 (3rd ed. 2010). It provides an integrated budgetary process by which City leaders annually allocate City money to fund City services. The Mayor provides a Budget recommendation on allocating City funds. Charter § 265(b)(14). The City Council has the final decision on that allocation subject to a special Mayoral veto process. Charter §§ 11, 11.1, 69, 71, and 290.

Generally, this "integrated process of determining the budget of a [city] and adjusting the number of employees in each [city] office to conform to the overall spending plan is a legislative function which 'may not be controlled by the courts.'" *County of Butte v. Superior Court*, 176

¹ We equate the phrase *City services* with *City functions* and use them interchangeably in this memorandum. See e.g. Cal. Gov't Code § 54980(c).

Cal. App. 3d 693, 698 (citing *Hicks v. Board of Supervisors*, 69 Cal. App. 3d 228, 235 (1977)). However, the courts also have held that “in making allocation decisions, the legislative body cannot act in excess of its authority by first *eliminating* mandatory government functions” established by a city charter. *Scott v. Common Council*, 44 Cal. App. 4th 684, 697 (1996) (emphasis added). Accordingly, we look to the Charter to determine which services it obligates the City to provide to the public, which it may not entirely eliminate; and any priorities the Charter establishes for those services.² The Charter creates some specific Departments to provide some public services, like the Fire and Police Departments. Charter §§ 57 and 58. In addition, Charter section 26.1 obligates the City to provide other public services, such as building inspection, water, public works, parks and recreation and library services. The Charter also requires the City Council to use some City moneys in certain ways for citizen benefit. We address these areas in turn.

A. Charter Services through Charter Departments

1. Charter section 57: The Police Department

Charter section 57 establishes the City’s Police Department.³ The Charter does not describe particular City services the Department must provide to the City. The Municipal Code establishes the authority and duties of the Department as follows:

The Police Department shall be charged with the preservation of the peace and order of the City, the protection of all persons and property, and the enforcement of all penal ordinances and laws. The Chief of Police shall at the request of the City Attorney, serve any process issued in any civil action to which the City of San Diego is a party. Adequate patrol of all parts of the City, so far as the size of the force permits, shall be maintained. Modern methods of criminal identification, including fingerprinting and the filing of criminal records of all criminals, shall be employed. Efforts shall be made to cooperate with other cities, counties, states and federal criminal agencies in all matters pertaining to the apprehension and identification of criminals.

² The Charter also obligates City officers (for example, the City Attorney (Charter §§ 40 and 40.1); Chief Financial Officer (Charter § 39); City Auditor (Charter § 39.2); and City Treasurer (Charter § 45)) to fulfill many functions for the City itself. The City Council is obligated to fund these Charter-required officer functions in much the same manner described in this Report for City functions. The public benefits from these services as well, albeit indirectly. We limit this Report to City services impacting the public more directly.

³ Charter section 57 provides in pertinent part: “The Police Department shall consist of a Chief of Police and such other officers, members and employees as the Council may from time to time prescribe by ordinance. ¶ The Chief of Police shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council ¶ The Chief of Police, with the approval of the City Manager, shall appoint, direct and supervise the personnel, subject to Civil Service regulation, have charge of the property and equipment of the department and exercise all powers and duties provided by general laws or by ordinance of the Council. The Chief of Police shall have all power and authority necessary for the operation and control of the Police Department.”

SDMC § 22.0601.

In addition, the City also places many additional duties upon the Police Department throughout the Municipal Code, such as issuing and enforcing alarm user permits (SDMC §§33.3701-33.3723); enforcing pay telephone regulations (SDMC §§ 54.0501-54.0508); and inspecting many regulated businesses, to name just a few. Because the Police Department is a Charter-created City department, the City Council may not eliminate all funding for its services. Moreover, insofar as the department's services involve police protection, the City Council must give priority to those services in the budgetary process as prescribed by Charter section 11.1.

2. Priority for Police Protection: Charter Section 11.1

Charter section 11.1 was added by voters and amended twice in three elections in 1980 and 1986 to address competing voter initiatives which would have removed the City Council's discretion to establish salary levels for police and firefighters. In pertinent part, Charter section 11.1 provides:

The City Council shall annually adopt an ordinance establishing salaries for all City employees. The City Council shall adopt this ordinance not later than May 30 of each year after considering all relevant evidence including but not limited to the needs of the citizens of the City of San Diego for municipal services, the ability of the citizens to pay for those services, local economic conditions and other relevant factors as the Council deems appropriate. The City Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance.

We have reviewed the voter materials and the history of the section and interpret the plain language of section 11.1 in context.⁴ The section reaffirms the City Council's broad discretion to set the *salaries* of all City employees "after considering all relevant evidence including but not limited to the needs of the citizens of the City of San Diego for municipal services, the ability of the citizens to pay for those services, local economic conditions and other relevant factors as the Council deems appropriate." Charter § 11.1. However, in considering the

⁴ Voters at the June, 1980 election were told adding section 11.1 to the Charter would allow taxpayers "the right to say no to exorbitant [sic] wage demands," by holding elected officials "directly accountable" for their salary and budget decisions. Ballot Pamp. Mun. Prim. Elec. (June 3, 1980), argument in favor of Prop. A at C-2. They were also told that "Police protection must be San Diego's first priority;" that "**police protection must come first in budgeting;**" that "**police protection gets the first call on city resources;** *Id.* (emphasis in the original). In November 1980, voters were told that "[w]e can't afford to tie employee pay to that of other cities." Ballot Pamp. Mun. Gen. Elec. (Nov. 4, 1980) argument in favor of Prop. L at L-2. In June 1986, voters were told that "**POLICE PROTECTION WILL REMAIN SAN DIEGO'S FIRST PRIORITY;**" that the proposition "reaffirms the clear direction voters gave to the City Council in 1980." Ballot Pamp. Mun. Prim. Elec. (June 3, 1986) argument in favor of Prop E.

final adoption of the salary ordinance *and* the annual budget, the Council discretion is more limited. In that process, the Council must “give priority in the funding of municipal services to the need of the citizens for police protection.” *Id.* The voter materials also make plain that the priority given police *protection* compared to other municipal services does not necessarily require priority in setting police *salary* or compensation. In addition, this requirement for priority in funding municipal services applies only to *police* protection and not to other municipal services.

3. Charter Section 58: The Fire Department

Charter section 58 establishes the Fire Department.⁵ The section also establishes the function and authority of the Department as “the protection of the lives and property of the people of the City from fire.” Charter § 58. The Municipal Code designates the Fire Department as a City Department, and establishes its Chief as the City’s Fire Marshall, imposing on him or her responsibility for enforcing the City and California Fire Code. *See* SDMC §§ 22.1801; 25.0202 to 25.0205; *see* Fire Code, SDMC, Ch. 5, Art. 5. Because the Fire Department is Charter-created, the City Council may not eliminate all funding for the public services it must specifically provide, namely, protection from “fire.”^{6,7}

B. Charter Section 26.1 Services

Charter section 26.1 provides: “It shall be the obligation and responsibility of The City of San Diego to provide public works services, water services, building inspection services, public health services, park and recreation services, library services, and such other services and programs as may be desired, under such terms and conditions as may be authorized by the Council by ordinance.” Section 26.1 was added by voters in 1963 in conjunction with the repeal

⁵ Charter section 58 provides in pertinent part: “The Fire Department shall consist of a Chief of the Fire Department and such other officers, members and employees as the Council may from time to time prescribe by ordinance. ¶ The Chief of the Fire Department shall be appointed by the City Manager and the appointment shall be confirmed by a majority of the Council . . . The Chief of the Fire 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. ¶ The Chief of the Fire Department, with the approval of the City Manager, shall direct and supervise the personnel. Members of the Fire Department shall be subject to all the Civil Service provisions of this Charter contained in Article VIII”

⁶ Although the Charter places no obligation upon the City to provide water rescue services, the City has elected to provide lifeguard services for many years. The Municipal Code places duties upon City lifeguards and recognizes them as members of the City’s retirement system. *See* SDMC §§ 63.20.2(b), 63.20.4, 63.20.6, 24.0103, and 24.0403. The Mayor and the City Council retain control over whether such water-related services should continue to be provided, subject to any existing contractual or externally imposed requirements.

⁷ In addition, voters approved the City’s establishment and operation of a paramedic service to be funded by a 10% surcharge on their property taxes in the November 1977 election (Proposition C). By initiative ordinance in the November 1982 election (Proposition G), voters also required the Paramedic Transport System to meet certain criteria. Since 1997, the City provides emergency medical services under an agreement with the County and by contract.

of a number of Charter-created City Departments, some of which had previously provided these services.⁸

Although section 26.1 names certain services, it does not particularly define what each of them might include. When section 26.1 was added to the Charter, voters were expressly told the changes were “not intending in any way to eliminate present city departments or present city services, but the flexibility and economy obtained by removal of obsolete and useless charter language will make the government more efficient and promote economy in the long run.” Ballot Pamp. Mun. Prim. Elec. (Sept. 17, 1963) at 37, argument in favor of Prop. R. Accordingly, we look to the services provided by those former Charter Departments for guidance.

1. Public Works Services

Former Charter section 46 established the former Department of Public Works, providing that it “shall have charge of streets, sewers,⁹ refuse collection and disposal,¹⁰ public buildings, shops, and the manufacturing, storing and repairing of automotive equipment, machinery, tools and other implements and equipment used by the City.”

2. Building Inspection Services

Former Charter section 59 established the Department of Inspection, which concerned itself with building inspections. Inspectors could enter buildings “for the purpose of inspecting the same and for enforcing the provisions of the building code, and all other laws and ordinances in force in the City relating to the duties of the Department in the preservation of the safety of the public.” Charter § 59.

3. Water Services

Charter section 53 previously established a separate Water Department. The title to the section was changed to Water “Utilities” in the 1963 election. That amendment was intended to clarify Charter language and put “the authority to supervise the water utility in the hands of the Manager.” Ballot Pamp. Mun. Prim. Elec. (Sept. 17, 1963) at 36, argument in favor of Prop. R. The utility is responsible for water supply, treatment, and distribution. *See* 1992 City Att’y MOL 493 (92-67; Aug. 10, 1992) at 495-499.

⁸ The Charter Departments (and Offices) repealed at the September 17, 1963 Municipal Primary Election included: the Manager’s Control Department (Charter § 33); the Budget Officer (Charter § 34); the City Engineer (Charter § 36); the Directors of Departments (Charter § 44); the Department of Public Works- Street Superintendent (Charter § 46); the Harbor Department (Charter § 54); the Department of Inspection (Charter § 59); the Department of Public Health (Charter § 60); the Social Service Department (Charter § 61); and the Library Department (Charter § 63).

⁹ *See* 1992 City Att’y MOL 493 (92-67; Aug. 10, 1992) at 497-499 (historical discussion about sewer services in San Diego).

¹⁰ *See* City Att’y MOL No. 2010-16 (July 16, 2010)(discussing the People’s Ordinance, refuse collection, Charter sections 26 and 26.1).

Charter section 53 requires the City to “include in the annual appropriation ordinance for the Water Utility Fund provision for operating and maintenance costs; replacements, betterments, and expansion of facilities; payments necessary for obtaining water from the Colorado River; any other contractual obligations; reserves for future expansion of water utility plant; reserves for future water purchases.” Costs of these services are currently funded through a rate-based system.

4. Park and Recreation Services

Charter section 55 was amended essentially into its current form in the 1963 election, deleting the Park and Recreation Commission as a Charter Commission; deleting references to the Park and Recreation Director; and giving responsibility over park and recreation services to the City Manager. Ballot Pamp. Mun. Prim. Elec. (Sept. 17, 1963) at 29, Ballot Question Prop. Q. The intent however was that “[n]either the . . . Commission, nor the Director. . . nor the Department will be removed from city Government.” *Id.* at 31, argument in favor of Prop. Q.

Charter Section 55 sets no specific levels of park and recreation services. It gives the City Manager “the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of City-owned property, golf courses, playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City,” as well as the authority to enforce regulations regarding their use and protection. *Also see*, SDMC §§ 22.1502, 22.1801, 22.1501 and 22.1503.¹¹ It also gives the Manager “the management, control, preservation, regulation, improvement and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein.” Charter § 55.¹²

5. Library Services

Former Charter section 63, establishing the Library Department and the Library Commission was repealed by Proposition P in the 1963 election. It was not “intended that there will be any change in the present organization or management of the departments deleted, or of citizen boards attached thereto.” Ballot Pamp. Mun. Prim. Elec. (Sept. 17, 1963) at 28, argument in favor of Prop. P at 29. The former section required the Library Department to have “such central and branch libraries and reading rooms and have such subordinate officers and employees as shall be authorized by ordinance” and gave the City Librarian management and control over the libraries; authority to establish rules and regulations for Library property; and purchasing power subject to the Annual Appropriation Ordinance. Former Charter § 63.

¹¹ Council Policy 100-19 also declares that “basic neighborhood amenities, including active use parks and recreation centers, are important priorities and should be adequately funded to serve the needs of their communities.” It directs the City Manager to reflect “this priority for these parks and recreation facilities . . . in the annual budget proposed to the City Council each fiscal year.” *Id.*

¹² We address the maintenance of cemetery graves and lots required under Charter section 55 separately.

The Library Department is designated a City Department in the Municipal Code, which also creates the Board of Library Commissioners. SDMC §§ 22.1801 and 26.0301. The Municipal Code requires the City Council to make “any appropriation for general library operation, maintenance and supplies in accordance with Council Policy 100-19.” SDMC § 22.0228. The Council Policy leaves the ultimate discretion for funding to the City Council, while recognizing that the Municipal Code requires the City Manager to include library funding “in an amount equal to up to 6% of the general fund” in the annual budget proposal. Council Policy 100-19. The Municipal Code requirement may be suspended by the Council in any fiscal year, if the City Manager asks for the suspension after determining anticipated revenues “will be insufficient to maintain existing City services necessary for preserving the health, safety, and welfare of the citizens.” SDMC § 22.0228(d) and (e).

6. Public Health Services

Former section 60 established a City Department of Public Health. Former sections 60 and 60.2¹³ were repealed in the 1963 election by Proposition R. The 1963 election materials indicated the City’s “health services ha[d] been consolidated in the county Health Department for the past decade.” Ballot Pamp. Mun. Prim. Elec. (Sept. 17, 1963) argument in favor of Prop R. at 37. Accordingly, the public health services required by section 26.1 have been assumed and are now provided by the County of San Diego.

C. Other Charter Required Services

1. Charter Section 55: Cemetery Maintenance

Charter section 55 requires in part that:

At least twenty percent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission and shall be invested in such income-producing securities as the Funds Commission may decide. The principal of the perpetuity fund (subject to such accretion or diminution as may result from investing the same) shall not be available for meeting expenses for maintenance or upkeep of the cemeteries in any manner whatsoever. All income derived from the investment of the moneys in said perpetuity fund, together with the balance of the sale price of said lots not placed in the perpetuity fund, shall be expended in the maintenance and upkeep of the cemeteries and the perpetual care and upkeep of all graves and lots in said cemeteries.

¹³ Section 60.2 had authorized a contract with the County of San Diego to provide the City’s public health services.

Section 55 also provides that if the investment income from funds in the Cemetery Perpetuity Fund is insufficient that “the Council shall annually appropriate from other revenues an amount sufficient to enable the City to provide perpetual care and upkeep of all graves and lots in the cemeteries.” If the investment income is more than is required for the care and upkeep however, “the Council may direct that the excess . . . be used for any other municipal purpose.” *Id.*

2. Charter Section 55.2: Limit on Mission Bay and Regional Parks Budgeting for Operations and Maintenance

San Diego voters approved the addition of section 55.2 to the San Diego Charter at the November 2008 election. Section 55.2 requires the City to distribute revenues received from City-owned property in Mission Bay Park in a particular manner. A threshold amount goes to the City’s general fund and excess lease revenue is allocated by equation to two special funds: the San Diego Regional Park Improvement Fund; and the Mission Bay Park Improvement Fund. This office explained the allocation process in a memorandum in 2010. City Att’y Memorandum MS No. 2010-17(Dec. 10, 2010). The money in the special funds may only be used for particular purposes, none of which are operational or maintenance (with one exception related to deferred maintenance which is also a capital improvement). Charter §§ 55.2(c), (c)(1)(G), (d) and (e); City Att’y Memorandum MS No. 2009-12 (Dec. 4, 2009) (2009 Memorandum).

However, as we also explained in the 2009 Memorandum, Charter section 55.2(g) places limits on funding for park operations and maintenance in Mission Bay and the Regional Parks.

Section 55.2(g) provides:

The annual budgets allocated for park operations and maintenance in the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks* shall not be reduced at a greater rate or increased at a lesser rate relative to the overall annual budget of park and recreation as a result of monies available hereunder.

“Essentially, this section prohibits the City from reducing the annual budgets for operations and maintenance for the Mission Bay Park and the Regional Parks at a different rate than the overall annual Park and Recreation budget *because of* the money in the Improvements Funds made available to these parks by the application of Charter section 55.2.” 2009 Memorandum at 1.

3. Charter Section 64: Support of Educational and Cultural Institutions

Charter Section 64 provides in part that the “Council shall annually make appropriations for the support of all institutions of an educational, scientific, historical and cultural character, and which have a tendency to promote the welfare of the City and its inhabitants.” The section goes on to limit the type of institutions which must receive some funding to only those “which

are now or which may hereafter be controlled by The City of San Diego and partially or wholly operated and maintained by said City for the benefit of its inhabitants.” Charter § 64. This provision has been part of the Charter since 1931, and its requirements have been less than clear from the outset. *See* 1939 Op. City Att’y 271 at 273-274 (Aug. 9, 1939) (section “might well be clarified and made more definite and specific.”).

The section originally applied to institutions within Balboa Park and was “the only authorization the City has to make contributions for the maintenance and support of institutions of this character which are controlled by the City.” 1940 Op. City Att’y 231 (July 5, 1940) This Office determined the institutions had no ability to legally obligate the City to pay for services or supplies for which they had separately contracted. To the extent the City did appropriate any funds for their maintenance, the City was obligated to maintain control of that funding, and any disbursements of those appropriations must be made by and through the Park Department. *Id.* If there are current appropriations made under this section, we will address individual questions upon request.¹⁴

4. Section 103.1a: Environmental Growth Fund

The City has an Environmental Growth Fund into which the City must deposit “25 percent of all moneys derived from the revenues accruing to the City from any franchises for the transmission and distribution of gas, electricity and steam within the City of San Diego.” Charter § 103.1a. “[T]wo-thirds of the moneys paid into the Environmental Growth Fund shall be used exclusively as debt service for bonds of any nature issued for the acquisition, improvement and maintenance of open space to be used for park or recreational purposes.” *Id.* The remainder over the debt service, or the entire amount after debt service ends, “shall be used . . . exclusively for the purpose of preserving and enhancing the environment of the City of San Diego in whatever manner is deemed appropriate by the City Council of The City of San Diego.” *Id.*

II. THE MAYOR AND CITY COUNCIL HAVE DISCRETION TO SET LEVELS OF FUNDING FOR SERVICES

As we have seen, the City Council is not free to eliminate *all* funding for the public services described in these Charter sections, because the Charter obligates the City to provide them. The Charter requires the Council to give priority to police protection when funding municipal services, and may limit reductions to maintenance and operations funding in Mission Bay and the Regional Parks. It also requires that certain revenues be used for particular services,

¹⁴ More recently, the City Council established a separate method for funding various City Arts, Culture and Community Festivals through Transient Occupancy Tax (TOT) revenues. SDMC §§ 26.0701-26.0728, 35.0101 to 35.0138; Council Policy 100-03.

such as cemetery maintenance or environmental purposes, or improvements in Mission Bay and the Regional Parks.¹⁵

This brings us to whether the City *must* spend a *specific amount* of money on any given service. There are always exceptions to this rule, such as requirements imposed by court orders, contractual agreements, or particularly-earmarked spending, — but the answer to that question is generally no. The reason: cities require flexibility and are necessarily provided broad authority to determine how taxpayer dollars should be spent to meet taxpayer needs. That is why city charters and statutes rarely, if ever, specify what level of funding is necessary for any service.

The San Diego Charter is no exception. It provides broad discretion to City leaders to fund City services, and to set City salaries in an integrated budgetary process. The very essence of that discretion is the power and the responsibility to make “comparisons, choices, judgments, and evaluations.” *Braman v. State of California*, 28 Cal. App. 4th 344, 351(1994) (citing *Thompson v. County of Alameda*, 27 Cal. 3d 741, 749 (1980)).

While the City Council may not eliminate *entirely* the City services or functions required by the Charter, the City Council is *not* required to fund every request for funding at whatever service level requested. “[N]o doubt . . . most heads of governmental offices[] would understandably prefer to determine for himself the funding and personnel to be allocated to the agency for which he is responsible The chaos that would result if each agency of government were allowed to dictate to the legislative body the amount of money that should be appropriated to that agency, or its staffing and salary levels, is readily apparent. The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, *it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.*” *County of Butte*, 176 Cal. App. 3d at 699 (emphasis added).

Accordingly, determining the appropriate level of funding for municipal services, which the Charter obligates the City to provide, generally rests within the discretion of the Mayor and City Council as part of the Charter’s integrated budgetary process.

III. SPECIFIC STATE AND FEDERAL LAW REQUIREMENTS SHOULD BE ADDRESSED DURING THE BUDGET PROCESS

We have been asked to include in our analysis any services required by state or federal law. The scope of that request is far beyond what we can accomplish in this document in timely

¹⁵ The Council has separately expressed certain priorities for funding library and park and recreation services by ordinance or Council Policy. These priorities are not Charter mandated, and in general may be changed by Council action.

fashion. This does not mean that state and federal law requirements have no impact on the City's budget. They do.

For example, the City must comply with requirements of the Americans with Disability Act and the various regulations promulgated under that federal law and its amendments. To name just two state law requirements, the City must comply with the California Public Records Act (Cal. Gov't Code §§ 6250-6276.48); and with the state laws obligating it to create a planning agency and to fund it. Cal. Gov't Code §§ 65100, 65104;¹⁶ also Charter § 41(c), SDMC §111.0202. The City must also comply with federal and state environmental laws and regulations. For example, there are the federal permits administered by the California Regional Water Quality Control Board regulating stormwater discharges. *See discussion* 1995 City Att'y MOL 648, 649-651 (95-68, Sept. 25, 1995); SDMC §§ 43.0301 – 43.0312. Compliance is funded through the General Fund.¹⁷ In addition to various federal and state law requirements imposed upon the City, the City voluntarily receives grants, and enters into contracts with private or public groups or agencies, which also may require compliance with state or federal laws impacting the City's budget.

This Office can provide more specific analysis if the Council has particular questions, as we recently did in assessing the responsibility for sidewalk maintenance and repair. *See City Att'y MOL No. 2011-01*(Jan. 28, 2011). In addition, the City Council may also request the various City Departments to provide it with any unique requirements for services imposed upon the City's budget by applicable state or federal laws, when the Departments present their annual budget requests.

CONCLUSION

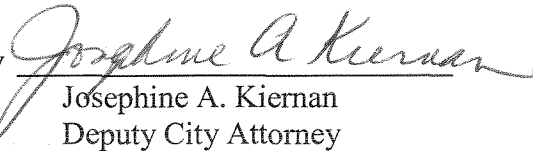
The City Charter obligates the City to directly provide its citizens with a number of municipal services. They include police protection; fire protection; public works services (including streets, sewers, refuse collection and disposal, public buildings, shops, and the manufacturing, storing and repairing of automotive equipment, machinery, tools and other implements and equipment used by the City); water services (water supply, treatment and distribution); building inspection services (enforcement of the building code and preserving public safety); public health services (assumed and provided by the County of San Diego); park and recreation services; and library services. Charter section 11.1 requires the Council to "give priority in the funding of municipal services to the need of the citizens for police protection," when it considers the final adoption of the salary ordinance and the annual budget.

¹⁶ The City may recover planning agency funding by imposing "fees to support the work of the planning agency, [which] . . . shall not exceed the reasonable cost of providing the service . . . in accordance with Section 66016." Cal. Gov't Code § 65104.

¹⁷ The City also complies with federal permits for sewer system discharges to the ocean. Compliance with that permit is funded through a rate-based system, not the General Fund. Unlike sewer fees, courts have held that fee imposition related to stormwater compliance must comply with Proposition 218, which requires public approval. *Howard Jarvis Taxpayers Assn. v. City of Salinas*, 98 Cal. App. 4th 1351 (2002); *but see* Cal. Health & Safety Code § 5471; 84 Op. Cal. Att'y Gen. 61 (2001).

In addition, the Charter requires the use of particularly designated funds for the perpetual care and upkeep of graves and lots in City cemeteries; to preserve and enhance the environment of San Diego; and for specific purposes in Mission Bay and the Regional Parks. It also ties funding for maintenance and operations in the Mission Bay and the Regional Parks to the general funding for City parks and recreation; and authorizes the City to support institutions of an educational, scientific, historical and cultural character, which the City controls and partially or wholly operates and maintains for the benefit of its inhabitants.

JAN I. GOLDSMITH, CITY ATTORNEY

By 
Josephine A. Kiernan
Deputy City Attorney

JAK:als

RC-2011-10

cc: Mayor Jerry Sanders

Andrea Tevlin, Independent Budget Analyst