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REPORT TO THE AUDIT COMMITTEE

**AUTHORITY TO AUDIT A CITY ATTORNEY RECOMMENDATION TO COUNCIL TO
DISMISS A LAWSUIT**

INTRODUCTION

At the Audit Committee meeting on September 12, 2011, a member of the public requested an audit of the dismissal of a pension-related lawsuit.

DISCUSSION

The San Diego City Council (Council) authorized the dismissal of a pension-related lawsuit following a closed session meeting concerning the case. The City dismissed the lawsuit on June 15, 2011.

A member of the public questioned the wisdom of dismissing this lawsuit and suggested the Audit Committee direct the City Auditor to audit the decision to dismiss. As explained below, an audit of a closed session determination to dismiss a lawsuit is inappropriate.

The City Auditor is charged with conducting or overseeing financial and performance audits in accordance with generally accepted government auditing standards (GAGAS). San Diego Charter §39.2. GAGAS provide a “framework for conducting high quality government audits. . .” and the City Auditor is required to follow GAGAS when conducting audits. GAGAS § 1.03; San Diego Charter §39.2.

A financial audit is “an independent assessment of and reasonable assurance about whether an entity’s reported financial condition, results, and use of resources are presented fairly in accordance with recognized criteria. Reporting on financial audits performed in accordance with GAGAS also includes reports on internal controls, compliance with laws and regulations, and provisions of contracts and grant agreements as they relate to financial transactions, systems, and processes. Financial statements performed under GAGAS include financial statement audits and other related financial audits...” GAGAS, §1.22.

A performance audit is an engagement that provides “assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to

public accountability. Reporting information without following GAGAS is not a performance audit but a non-audit service provided by an audit organization." GAGAS, §1.25. The San Diego Charter limits the City Auditor to audits that comply with GAGAS.

In addition to performing financial and performance audits, the City Auditor administers the City's whistleblower hotline in accordance with California Government Code section 53087.6. This statute authorizes the City Auditor to investigate fraud, waste, or abuse. "Fraud, waste, or abuse" includes "any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct."

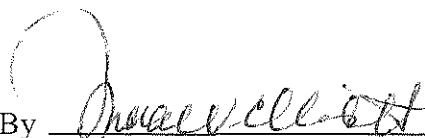
The City's dismissal of a pension-related lawsuit does not fall within the City Auditor's authority as it is neither a financial nor a performance audit, and is not fraud, waste, or abuse as defined by California Government Code section 53087.6.

We further note that the City dismissed the aforementioned lawsuit at the direction of the Council following a closed session conference about the status of the case and available legal options. It would likewise be inappropriate to audit the Council's direction to legal counsel as their action does not involve a financial audit, a performance audit, or a whistleblower complaint concerning fraud, waste, or abuse.

CONCLUSION

In summary, an audit of the City dismissal of a pension-related lawsuit is not authorized under the San Diego Charter or California Government Code section 53087.6.

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