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REPORT TO THE
REDEVELOPMENT AD HOC COMMITTEE

REDEVELOPMENT AGENCY APPOINTMENT OF EXECUTIVE DIRECTOR

INTRODUCTION

This Report is prepared in response to a request by the Redevelopment Ad Hoc Committee for an analysis of the legal options available to the Redevelopment Agency of the City of San Diego (Agency) as it considers the appointment of an Executive Director.

Under the current Bylaws of the Redevelopment Agency of the City of San Diego (Bylaws), as amended on November 15, 2005, the Agency's Executive Director or Directors "shall be the Mayor and or such person or persons as may be designated by the Agency." Bylaws, art. II, § 1, at Agency Resolution Number R-03970 (Nov. 15, 2005). The Mayor is presently serving as the Executive Director.

Pursuant to the current Agency Bylaws, the Executive Director "shall have general supervision over the administration of the business and affairs of the Agency subject to the direction of the Agency." Bylaws, art. II, § 4. Further, "[t]he Agency through its Executive Director may from time to time employ such personnel as it deems necessary." Bylaws, art. II, § 6. The Executive Director and the other officers of the Agency "shall perform such other duties and functions as may from time to time be required by the Agency or the bylaws or rules and regulations of the Agency." Bylaws, art. II, § 5. Thus, the Agency has authority to designate its Executive Director, who is an administrator. Acting through its Executive Director, the Agency may also employ other personnel it deems necessary.

At its December 7, 2010, meeting, the Agency extended the Mayor's designation as Executive Director for sixty days, until March 1, 2011, to consider what options are available to the Agency if it chooses to appoint an Executive Director who is not the Mayor. This Report discusses the legal framework in which to discuss those options, which would not require significant changes to the present organizational structure of the Agency.¹

¹ On January 26, 2011, the Office of the Independent Budget Analyst (IBA) issued its report number 11-04, regarding "Options for Structuring the Redevelopment Agency." The IBA's Report includes options for organizational restructuring of the Agency. Some of these options would require changes to the present structure of the Agency. If the Redevelopment Ad Hoc Committee desires further legal analysis of these organizational models, this Office would be happy to provide it.

If the Agency desires to appoint someone to the position of Executive Director other than the Mayor, the Agency has two options, under the Agency's present structure: (1) the Agency may contract with any other agency, including the City, for the furnishing by that agency of any necessary staff services associated with or required by redevelopment, including an Agency Executive Director, and which could be performed by the staff of that agency (Contract for Services Option), or (2) the Agency may select, appoint, and employ an Executive Director who would serve as an employee of the Agency, not the City (Agency-Employee Option).

DISCUSSION

I. COMMUNITY REDEVELOPMENT LAW CONTROLS THE AGENCY'S DECISIONS REGARDING EMPLOYMENT OF AGENCY PERSONNEL.

The Community Redevelopment Law (CRL), at California Health and Safety Code sections 33000-33855, governs redevelopment activity by public agencies within the state, including charter cities such as the City of San Diego. *See Redevelopment Agency v. City of Berkeley*, 80 Cal. App. 3d 158, 168-69 (1978) (holding that state redevelopment laws preempt the field, and charter provisions may not conflict with them); *Andrews v. City of San Bernardino*, 175 Cal. App. 2d 459, 462 (1959) (stating that redevelopment agencies are creations of the state). When a local governing body acts under the CRL, it is pursuing a state concern and effectuating state legislative policy. *Redevelopment Agency*, 80 Cal. App. 3d at 168. Thus, a redevelopment agency is operating as an administrative arm of the state, and it is a separate and distinct entity from a city. *Id.*

Under the authority of the CRL, the San Diego City Council (City Council), as the City's legislative body, has established itself as the City's redevelopment agency. San Diego Resolution R-147378 (May 6, 1958).² The City Council serves as the Agency's governing board (Agency Board).³ Under the CRL, the Agency must have access to the services and facilities of the City's planning commission, city engineer, and other departments and offices. Cal. Health & Safety Code § 33128.

² The CRL provides, in pertinent part: "There is in each community a public body, corporate and politic, known as the redevelopment agency of the community." Cal. Health & Safety Code § 33100. The CRL authorizes a city's legislative body to, by ordinance subject to referendum, declare "that there is need for an agency to function in the community." Cal. Health & Safety Code § 33101. *See also* Cal. Health & Safety Code § 33007 (defining "legislative body" under the CRL as "the city council, board of supervisors, or other legislative body of the community"). In accordance with the CRL, the legislative body may establish itself as the redevelopment agency, or it may establish a separate redevelopment agency composed of resident electors of the community. Cal. Health & Safety Code §§ 33003, 33110, 33200.

³ The CRL, at California Health and Safety Code section 33200, provides, in pertinent part:

[T]he legislative body may, at the time of the adoption of an ordinance pursuant to [the CRL], or any time thereafter by adoption of an ordinance, declare itself to be the agency; in which case, all the rights, powers, duties, privileges and immunities, vested by this part in an agency, except as otherwise provided in this article, shall be vested in the legislative body of the community."

A redevelopment agency may hire its own administrative staff. The CRL provides, in part:

An agency may select, appoint, and employ such permanent and temporary officers, agents, counsel, and employees as it requires, and determine their qualifications, duties, benefits, and compensation, subject only to the conditions and restrictions imposed by the legislative body on the expenditure or encumbrance of the budgetary funds appropriated to the community redevelopment agency administrative fund.

Cal. Health & Safety Code § 33126(a).⁴ An agency is required to adopt personnel rules and regulations applicable to its employees. *Id.*⁵ An agency may also obtain, hire, purchase, or rent office space, equipment, supplies, insurance, or services. Cal. Health & Safety Code §33127(a).

As an alternative to hiring its own staff, a redevelopment agency may contract with any other agency to obtain administrative or other services. The CRL provides, in part: “An agency may contract with the Department of Housing and Community Development, or any other agency, for the furnishing by the department, or agency, of any necessary staff services associated with or required by redevelopment and which could be performed by the staff of an agency.” Cal. Health & Safety Code § 33126(b).

II. OPTIONS FOR DESIGNATION OF EXECUTIVE DIRECTOR POSITION.

A. Contract for Services Option: Agency Contracts with Another Entity to Provide Staff Services.

The first option for designation of an Executive Director, other than the Mayor, under the Agency’s current organizational structure is for the Agency to contract with another agency to provide an Executive Director (or any other necessary staff services). Presently, City staff members, working under the authority of the Mayor, provide administrative services to the Agency.

⁴ The CRL authorizes the legislative body of a City to appropriate to a redevelopment agency funds that “the legislative body deems necessary for the administrative expenses and overhead of the agency.” Cal. Health & Safety Code § 33610. “The money appropriated may be paid to the agency as a grant to defray the expenses and overhead, or as a loan to be repaid upon such terms and conditions as the legislative body may provide.” *Id.* If a redevelopment agency receives administrative funds from a city, it does not make the redevelopment agency a department of the City: “The grant of money appropriated by the legislative body of the [City] to the community redevelopment agency administrative fund is not to be construed as making the agency a department of the community or placing the officers, agents, counsel, and employees under the civil service of the [City].” Cal. Health & Safety Code § 33129. Where the CRL uses the term “community,” this Report substitutes the term “City” for ease in reading. The CRL defines “community” as “a city, county, city and county, or Indian tribe, band, or group which is incorporated or which otherwise exercises some local governmental powers.” Cal. Health & Safety Code § 33002.

⁵ “Such rules shall contain procedures affecting conflicts of interest, use of funds, personnel procedures on hiring and firing including removal of personnel for inefficiency, neglect of duties, or misconduct in office. Such rules and regulations shall be of public record.” Cal. Health & Safety Code § 33126(a).

Pursuant to an operating agreement (Agreement), first approved on April 10, 1975, and most recently amended on July 30, 1991, the City provides “management and administrative services to Agency to carry out the redevelopment activities.” *See* First Amended Agreement (City Clerk Document RR-278441).⁶ The Agreement provides, in pertinent part:

1. City will provide whatever management and administration is requested by Agency to carry out any redevelopment plan adopted by City for any project, pursuant to the California Community Redevelopment Law, Health and Safety Code, Section 33000 et seq.
2. Services to be rendered by City to Agency shall include but not be limited to providing the following:
 - a. A redevelopment staff.
 - b. Necessary accounting services.
 - c. Investment services.
 - d. Purchasing services.
 - e. Building inspection services.
 - f. Legal services.
 - g. Such further services and/or personnel as may be required by Agency.

First Amended Agreement, § 2.

The Agency could continue its agreement with the City to provide administrative services, including the services of an Executive Director, or it could contract with another entity.

Note, if the Agency desires to appoint a City employee to the position of Executive Director, other than the Mayor, the Agency must be mindful that most City employees report to the Mayor as the City’s chief executive officer. *See* San Diego Charter § 265(b)(1). The Mayor

⁶ San Diego Resolution R-278441 (July 30, 1991) (approving First Amended Agreement, City Clerk Document RR-278441, which cites City Clerk Document 750851 (April 10, 1975), and Agency Document No. 318 (Mar. 3, 1975)).

oversees the administrative work of the City.⁷ If the Agency desires the assistance of City employees to perform administrative work on a contractual basis, as is the case under the current agreement, the City employees performing the administrative work would still report to the Mayor. By agreement or otherwise, the Agency may not thwart the powers or duties that rest with the Mayor as set forth by City Charter. *See, e.g., Hubbard v. City of San Diego*, 55 Cal. App. 3d 380, 388 (1976) (holding that the City Council cannot create a department of city government not provided for by the charter and remove it from the supervision and control of the City Manager by designating the department a legislative department without regard to the powers and duties attempted to be given to it; further, the City Council “may not create a department of the city government, by whatever name it is given, which duplicates or infringes upon the specific powers or duties assigned by the charter to another department or, generally, to the Manager”).⁸

B. Agency-Employee Option: Agency Employs Executive Director Directly as Agency Staff.

Because the Agency has express authority under the CRL to hire its own employees, the second option available to the Agency under its current organizational structure is to directly hire

⁷ Pursuant to amended San Diego Charter section 260, which became effective August 16, 2010, “[a]ll executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX shall be transferred to, assumed, and carried out by the Mayor.” Charter section 28, which is within Article V, provides,

[The City Manager] shall assume the position of Director of any Department under his control for which a Director has not been appointed. The Directors, or heads of the administrative Departments under the Manager shall be immediately responsible to him for the efficient administration of their respective Departments. The Manager may set aside any action taken by a Director or Department subordinate responsible to him, and may supersede him in authority in the functions of his office or employment.

San Diego Charter §28. Thus, the Mayor has assumed the managerial duties and all administrative department directors report directly to him.

⁸ In *Hubbard v. City of San Diego*, the Council entered into a one-year consultant contract. *Hubbard*, 55 Cal. App. 3d at 382. Under the terms of the contract, the consultant provided full-time economic analysis services to the Council on fiscal issues pertaining to the City. *Id.* at 382-83. After the contract expired, the Council adopted several ordinances that established a new Department of Legislative Analyst and created the position of Legislative Analyst. *Id.* at 383. The newly-created department was to report directly to the Council and provide the same type of in-depth fiscal analysis that had previously been provided by contract. *Id.*

The court found that the ordinances establishing the Department of Legislative Analyst violated express provisions of the Charter. The court cited Charter section 29, which provides in part: “The Manager shall be responsible to the Council for the proper administration of all affairs of the City placed in his charge” *Hubbard*, 55 Cal. App. 3d at 386 n.1. Further, under the Charter, the City Manager had the duty to “keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as may be required by that body” *Hubbard*, 55 Cal. App. 3d at 385 n.1 (citing and quoting San Diego Charter §28). The duties of the Legislative Analyst that the Council had attempted to create duplicated and overlapped with duties that were expressly given to the City Manager under the Charter. Thus, the court said the ordinances were invalid. *Id.* at 388. “If duties which under the charter, when performed by the Manager, are administrative, they do not become legislative when performed by the Department of Legislative Analyst.” *Id.* at 391.

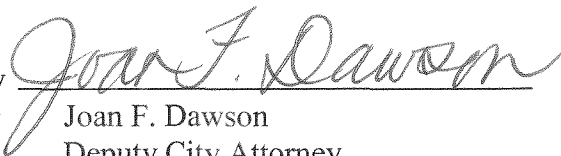
an Executive Director as an Agency employee. The Agency could conduct a recruitment process that allows both City employees and individuals from outside the City to participate. Under the CRL, when the Agency hires staff, the Agency may "determine their qualifications, duties, benefits, and compensation, subject only to the conditions and restrictions imposed by the legislative body on the expenditure or encumbrance of the budgetary funds appropriated to the community redevelopment agency administrative fund." Cal. Health & Safety Code § 33126(a).

As an Agency employee, the Executive Director would report directly to the Agency and be paid by the Agency. The Agency Board would be the Executive Director's appointing authority and would have the power to determine the Executive Director's duties, and to supervise, discipline, and terminate the Executive Director's employment. If the Agency hires its own Executive Director, this Office recommends the Agency enter into an employment agreement with the Executive Director, setting forth the terms and conditions of employment, including salary and benefits, the expectations of the Agency, the duties of the employee, whether the position is at-will, and, setting terms for termination of the agreement. As an Agency employee, rather than a City employee, the Executive Director would not be eligible for City benefits.

The Executive Director may, under the direction of the Agency, seek to contract with the City for additional administrative support services. However, City services would be provided under the authority of the Mayor. Further, the Agency cannot, by agreement or otherwise, abrogate the civil service rights of classified employees. If the Executive Director has concerns about the quality of work being produced by an employee or concerns about any other issue that might affect an employee's ability to perform at an expected level of competence, all actions regarding the employee would still have to go through the director of the department. The Executive Director would have no independent ability to hire, terminate, or discipline a City employee.

CONCLUSION

Pursuant to the authority granted to the Agency by CRL, the Agency may hire an Executive Director as Agency staff. This individual would work directly for the Agency, be paid by the Agency, and not be a City employee. In the alternative, under the present organizational structure, the Agency may contract with another entity, including the City, to provide administrative services, including the services of an Executive Director. If City employees continue to provide administrative services to the Agency, the Mayor, under the Charter, would have ultimate authority and supervision over the work of the City employees, even if the Mayor no longer served as the designated Executive Director.

By 
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